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Morrison & Foerster Oral History Series

John P. Austin

GROWTH OF MORRISON & FOERSTER FROM 1940s TO 1980s:
A PERSPECTIVE

With an Introduction by
Marshall Small

Interviews Conducted by
Carole Hicke
in 1990

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John P. Austin, "Growth of Morrison & Foerster from 1940s to 1980s: A Perspective," an oral history conducted in 1990 by Carole Hicke, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1993.

Copy no. _____



John Austin
1989

OBITUARY

John P. Austin, Morrison & Foerster

■ The firm's Thomas Jefferson' retired in 1991 but retained an office in S.F.

By Karen Coleman
Daily Journal Staff Writer

John Page Austin, a corporate partner who retired from Morrison & Foerster in 1979, died Dec. 5, days after a sudden stroke.

Associates say Austin, 86, suffered the stroke on the weekend before his death, when he was at a hospital visiting another lawyer of his generation.

After retiring from the partnership, Austin continued to work on matters and advise other lawyers as senior of-counsel until 1991. He maintained an office at Morrison & Foerster up until his death.

"He was in good health. You wouldn't have thought that was going to happen," said U.S. District Judge William Alsup, of San Francisco.

Alsup, a former Morrison & Foerster litigator, said he worked with Austin for 26 years before taking the bench.

"He was like the Thomas Jefferson of Morrison & Foerster," Alsup said. "He was a very well-respected visionary."

Alsup credited Austin with helping the firm to build its strong tradition of support for equal rights and access to justice.

"There was nobody who was more dedicated to those principles and putting them to work within the firm," Alsup said.

Marshall Small, now senior of-counsel in the corporate practice at Morrison & Foerster, met Austin when he joined the

firm as an associate in 1954. He said Austin remained his mentor for 46 years.

"He was a very good lawyer and very good counselor to a number of large business enterprises. He had a great deal of wisdom and judgment," Small said.

Austin brought large corporate clients like Memorex and Crocker Bank, since absorbed by Wells Fargo Bank, to Morrison & Foerster. He was also part of team of lawyers who created the legal foundation for bank credit-card systems.

Small said Austin also leaves a strong management legacy at Morrison & Foerster because he pushed the firm to simplify its partnership structure and return its moniker — a shifting compilation of partner names until 1976 — to a simple and stable reflection of the firm's founders.

Austin chaired Morrison & Foerster's management committee for several years in the 1970s.

Austin's professional affiliations included longtime relationships with national, state and local bar associations; University of California, Berkeley's Boalt Hall School of Law; the American Arbitration Association and other organizations. He had chaired the business law section and corporate law committee of the ABA.

William Orrick, another local federal district judge, became friends with Austin when the pair met after returning from service in World War II. Austin had been a lieutenant in the Navy, serving first in intelligence and later on a destroyer that participated in the Omaha Beach invasion of Normandy.

Judge Alsup interviewed Austin less

than three months ago about his military service, as a keepsake for friends and family.

On D-Day, he said, Austin recalled that his destroyer, the USS Satterlee, "was close enough to see the people on the beach."

Orrick, a San Francisco native, said he and the Montclair, N.J.-born Austin teamed up to "help each other along" after the war.

Austin was a graduate of Harvard College and Yale Law School, and he spent two years as an associate at Milbank Tweed Hope & Webb in New York before joining the U.S. Navy.

"What made him outstanding was that he was a man of absolute integrity. It was his absolute integrity that made him the kind of lawyer people wanted to have, and he carried that into his firm," Orrick said.

He noted that Austin remained active in community and pro bono activities.

He was active in a long list of community organizations, including local Golden Gate and Mission neighborhood centers, the Athenian School and College Preparatory School, and the San Francisco United Community Fund. He also spent time teaching kids at Bessie Carmichael School.

"He was the kind of man who got up every morning thinking, 'How can I help someone today,'" Orrick said.

Austin, of Berkeley, is survived by his wife Bessie, four children and nine grandchildren.

A memorial service will be held on Jan. 4 at First Congregational Church in Berkeley.

Correction

An obituary Monday gave the incorrect name for the widow of John P. Austin. She is Betty Austin. We regret the error.

Cataloging Information

AUSTIN, John Page, (b. 1914)

Lawyer

Growth of Morrison & Foerster from 1940s to 1980s: A Perspective, 1993, vii, 197 pp.

Early history of Morrison & Foerster: stories of Alexander Morrison, early partners and clients before 1940s; Austin's work as business counselor; clients: Crocker Bank, Consolidated Freightways, Memorex, MJM&M, Mastercharge; evolution of law practice in a large firm; changes in law-firm management: hiring of practices, rise of committee system, women, opening new offices.

Introduction by Marshall Small.

Interviewed 1990 by Carole Hicke for Morrison & Foerster Oral History Series. The Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

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PREFACE

The history of Morrison & Foerster reaches back over one hundred years to when its founder, Alexander Francis Hart Morrison, began practicing law in San Francisco in 1881. In 1890 he joined with Constantine E.A. Foerster to form the partnership from which today's firm derives its name.

As the partnership slowly expanded its practice, mainly in the areas of corporate counseling and business litigation, its clients were helping to develop the financial and manufacturing resources of the western United States. In the first part of the twentieth century, attorneys of regional and national stature became name partners in the firm: Roland C. Foerster, Edward Hohfeld, J. Franklin Shuman, and Herbert Clark.

A new generation came along after World War II, and the 1960s saw a spurt of growth that has carried the partnership to its present size of over six hundred lawyers, providing full-service teams to individuals and corporations around the world. In the 1970s, the firm decided to revert to its old name, Morrison & Foerster.

In addition to delivering legal service to the firm's clients and the community, Morrison & Foerster partners have participated in local, regional, and national professional activities, in support for charitable organizations, and in pro bono work for the indigent.

In 1988 the firm decided to fund a series of oral histories to be conducted by the Regional Oral History office of The Bancroft Library at the University of California, Berkeley. By recording the recollections of those who helped build the firm over the past fifty years, the written records will be amplified and strengthened. The firm's high standards of ethical responsibility and excellence in the practice of law have come down from its founders and builders. The oral histories will help today's partners to pass these standards on to future members.

Tom E. Wilson

August 1991

INTRODUCTION--by Marshall L. Small

I have been privileged to know John Page Austin over a period of almost thirty-eight years. For the first seven years he was my most immediate supervisor when I was a young associate at Morrison, Hohfeld, Foerster, Shuman & Clark, as it was known when I joined the firm. For thirty-one years thereafter he has been my partner and, commencing in 1980, Senior Of Counsel to the Firm. Throughout our period of association, John has been my mentor, colleague, and friend.

In trying to describe briefly a person whose life has been as varied and important to those around him as John's, I would focus on two facets of his personality that have had their most profound impact on the culture of our firm--his emphasis on institutional values and his sense of social responsibility.

I believe John's institutional values sprang from a strong sense of personal self-worth that permitted him to promote the broader interests of the firm, rather than inflate his own ego. When John became the acknowledged senior partner in the firm, he could easily have asked that his name be included in the firm name, which was the prior custom in our firm and in many other firms at that time. Instead, he chose to urge that the name be institutionalized and not include the name of any then-active partner in order to emphasize the importance of the firm as an institution and avoid the divisions that occur when various partners vie for recognition. John's was an important voice in moving the firm to our present system of compensating partners by eliminating minute distinctions in percentage interests and instead emphasizing the delivery of rough justice by grouping partners in the minimum number of tiers feasible, even though this position diminished John's own percentage interest in the firm by causing him to be grouped with partners junior to himself. John took a strong lead in pushing business down to younger partners and associates, rather than keeping control of it for himself, and thereby set an example for others that all clients are the firm's clients.

John's focus on the firm did not crowd out his personal life. He derived immense satisfaction from his family, and while he worked hard, he never short-changed the time spent with his family, and endeavored to see that those who worked with him had time for themselves and their families also.

When it came time for John to face retirement, he characteristically thought of the firm's interest rather than his own, and insisted that he become of counsel at the age of sixty-five, taking a substantial reduction in compensation when he could have continued for a number of years as an active senior partner. He was more interested in

establishing a pattern that would transfer control of the firm into younger hands in order to insure its continued vigor than he was in preserving his own level of compensation.

I became aware of John's social conscience early in my career, when he introduced me to Irving Kriegsfeld, and encouraged me to become active in community center work in which he had a long time interest. He has been a strong factor in maintaining the firm's tradition of pro bono service to the disadvantaged in society. John did not concentrate his energies on cultural institutions such as the symphony, opera, or art museums, but chose to make a hands on commitment to institutions that served those less able to care for themselves. As a retired partner he has continued this tradition, going regularly to the public elementary school adopted by the firm (the Bessie Carmichael School) to read books to the children.

John has maintained a strong identification with established institutions while trying to open opportunities for the disadvantaged. As a young partner, he reminded his senior partners, when they admonished him for voting the Democratic ticket, that he was a "Cleveland Democrat," and if a revolution ever came, he would be with his partners on the barricades. He takes pride in his New England education, as a graduate of Phillips Andover, Harvard College and Yale (not Harvard) Law School. He continues to maintain his membership and enjoys lunching at a prestigious San Francisco men's club. John in effect has maintained ties to both worlds, and has always prided himself on his old-fashioned New England or "Yankee" values as he has kept them in a changing profession and a changing world.

John earned the well-merited confidence of the many important clients for whom he served as a wise counsellor during his long professional career, and of his colleagues in the Business Law Section of the American Bar Association, for whom he served as Chairman in 1971-1972, and as a member and chairman of its Corporate Laws Committee for many years. I was privileged to have worked with him and learned from him in serving the firm's clients and working with the Corporate Laws Committee under his sponsorship.

With the possible exception of pro bono service, John's institutional values were not recognized in the firm when he was a young partner. He had to work to see that they were accepted by his partners over a period of time. His exceptional ability to develop strong personal relationships was a key factor in the success he enjoyed in persuading others to follow his leadership.

During the thirty-eight years of my association with John and the firm in which we have shared so much time together, I have seen the firm reshaped in his image. My own professional career and personal sense of

institutional values and those of other partners have been in large measure influenced by our association with him. As a result, both current and future partners and associates of our firm are the beneficiaries of John's wisdom and personal forbearance.

On reading the foregoing, John would with characteristic modesty remind us that our firm operates in a collegial manner, and that no one--least of all himself--should be given sole credit for the firm's accomplishments. And he would be correct. But it is also true that we are accustomed to operating in that manner because of the institutional values that he has done so much to establish.

Having duly noted John's many positive contributions to the firm, I would be remiss if I failed to note that he did have some eccentricities, perhaps the most notable of which related to his smoking habits. At his smoking peak as a younger partner, John was a heavy cigarette smoker, a pipe smoker, and an occasional cigar smoker. The pipe was his constant companion for many years and matches were continually tossed into the wastebaskets. While it is true that, unlike Roland Foerster, John's smoking habit never required calling the fire department, waste basket fires were not uncommon and once while John sat in Judge Holloway's office, a number of documents (still in the file) were badly charred due to his discarding a match after lighting his pipe. In later years, he used his practice of self-restraint to drop the smoking habit and life thereafter became less exciting for John's neighbors.

Marshall L. Small
Morrison & Foerster

May 1992
San Francisco, California

INTERVIEW HISTORY

John Page Austin has seen the growth of Morrison & Foerster from the 1940s to the present and is himself responsible for encouraging and overseeing that growth, both as a young lawyer and later as head of the firm. He was interviewed as part of the Morrison & Foerster Oral History Series, which will help to document the firm's history of the past fifty years. The series is being conducted by the Regional Oral History at the University of California, Berkeley.

Growing up in New Jersey, Austin graduated from Harvard College, but chose to move to Yale School of Law for his legal education. After military service during World War II, he joined the Morrison firm in San Francisco in 1946.

Austin practiced business law in an area where postwar growth was creating challenges in transportation and finances. At the same time, law firms were changing their management techniques. Austin experienced the changes taking place in Morrison & Foerster and was himself instrumental in setting new goals and directions for the firm in the 1960s. By 1971 he was chairman of the Management Committee, effectively head of the firm.

In his oral history, Austin speaks warmly and enthusiastically of other members of the firm; his own part he discusses more reluctantly.

Members of the firm look to John Austin as an elder statesman who passed down and enhanced by example the early partners' determination to give excellent legal service; Austin believes strongly in producing work of the highest quality while at the same time avoiding intrafirm competitiveness. In giving his "history" speech to summer associates and newly hired lawyers, he stresses the ethical standards and cultural unity going back to founder Alexander Morrison.

During the six tape-recorded interview sessions, Austin sat in his office thirty-five floors above San Francisco's downtown financial district. Occasionally he gestured at pictures on his wall--his grandfather, Judge Holloway--or referred to time notes he had kept over the years. Although retired, he is actively engaged in alternative dispute resolution.

The interviews took place on April 16, 20, 30; June 13, 20, 25, 1990. The tapes were transcribed within the firm, edited lightly by the interviewer, and reviewed carefully by Austin. He--again reluctantly--found some photographs to illustrate the volume.

Grateful thanks go to Carl Leonard for writing the introduction and to Tom Wilson, who is in charge of the history project for the firm and has offered help and guidance on all aspects of its history. Polly Asuncion,

secretary to John Austin, was cheerfully helpful in arranging appointments and passing messages; Andrea Carter, secretary to Tom E. Wilson, was instrumental in getting the final draft of the transcript ready for binding.

Carole Hicke
Project Director

August 1991
Regional Oral History Office
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University of California, Berkeley

BIOGRAPHICAL INFORMATION

(Please write clearly. Use black ink.)

Your full name John Page Austin
Date of birth May 26, 1914 Birthplace Montclair, N.J.
Father's full name Chellis Asahel Austin
Occupation Banker Birthplace Fellisburg, VT.
Mother's full name Edna Louise Page Austin
Occupation Housewife Birthplace Hornell, N.Y.
Your spouse Josephine Winmill Austin deceased - Betty Grant A
Your children Judith Page, Kathryn Winmill, Chellis
Richard, Jeffrey Deming.
Where did you grow up? Upper Montclair, N.J.
Present community Berkeley, C.A.
Education Phillips Academy (Andover), Harvard College,
Yale Law School -
Occupation(s) Lawyer
Areas of expertise Business Law

Other interests or activities The Settlement House Movement
(Pres.- Natl. Federation) - Local Government (Chairman
Berkeley Personnel Board) Bar Activities (Chairman ABA
Trustee of various organizations including three schools
(Andover, The Athenian School, College Preparatory School).

I EARLY HISTORY OF MORRISON & FOERSTER

[Interview 1: April 16, 1990]##¹

Alexander Morrison

Hicke: I know that you have made a few notes, but I thought one of the first things we might do is to talk about the very early days of the firm and get as much as you know or have heard or can recollect from other people about the early days. We should start with Alexander Morrison.

Austin: When I came with the firm on March 16, 1946 Mr. Morrison had been dead for some twenty-four years.

Hicke: Right.

Austin: But he was still a very, very substantial presence in the firm. All the Morrison lawyers had a photograph of him hanging in their offices.

Hicke: That's interesting.

Austin: And every new associate was given a copy with the suggestion that it be hung in his office. I discussed this with the managing partner who had a very good sense of humor--that was Judge [William] Holloway--and Judge said that I could hang the picture of my grandfather in lieu of hanging the picture of Mr. Morrison, and so I hauled this picture of my grandfather out which has hung in my office since that day.

¹ ## This symbol indicates the beginning or end of a tape, or an interruption in the tape.

The only reason I didn't hang Mr. Morrison's picture was because I'd never known the man and it didn't seem appropriate to me that I should get involved in that, but I recount this incident because it shows the tremendous lasting power of the man's memory. I mean, he was somebody who was still being talked about and remembered very strongly in 1946, twenty-four years after he died.

Hicke: As what? I mean, what were the . . . ?

Austin: As a very dominating person in the firm, and a person they all looked up to and respected. I think to me the most interesting thing, hearing these people talk about the firm in the days before I had anything to do with it, was the enormous change in the practice that started to occur just about the time I came with the firm in 1946. Prior to that time, most legal services of every sort and variety were provided by independent lawyers who didn't work for corporations. Now it's true that some of the larger utilities in 1946 had small, inside legal departments, but by and large that was a phenomenon that was to grow in the '40s and '50s and the '60s to the point where in the '80s corporate counsel have become a highly influential force in the practice of law.

And what did this mean for the old firm? Well, it meant for the old firm that a person like Mr. Morrison had every kind of conceivable legal problem thrown at him imaginable, and to the best of his ability, he handled those problems. He represented individuals; he represented corporations. There was no such thing in his lexicon as specializing; he just did everything.

Now, it's true the business climate was a great deal simpler in the early days. They didn't begin to have the kind of federal and state regulatory intrusion which exists today and which makes specialization so necessary, so that a man like Mr. Morrison would feel very comfortable about taking on any kind of problem that came up, because he didn't have to deal with the intricate legislative pattern of today.

Hicke: Mostly precedence is what he would go on?

Austin: Yes, precedence, common-law precedence, would be what he would rely on. Of course bearing in mind the important role of the codes.

You asked me about the firm before I came. That would be, I think, a very important fact to keep in mind when you're thinking of the firm before, say, 1946, which was that during almost half of Mr. Morrison's practice, there was no income tax, and this meant that if a man was frugal the way Mr. Morrison was, he was

able to amass enormous sums of money, as did his partners. And if you were to try and factor that in with today's inflation rates, why, you're talking about Mr. Morrison in the ten- to twenty-million-dollar range that he was able to put away, live very comfortably, and have a very fine library and this and that and the other thing. But that was an important thing, and of course the income tax law came in, as I remember it, about 1914, so from that time on it was a different ball game.² But up until then a lawyer could practice law the old fashioned way and still make money.

As I say, these are the characteristics as I've heard them and read about the practice of law before 1946. This is the way it went, and firms in those days were small, and the reason they were small was because to handle clients they didn't need a lot of people. Contrast that with the situation lawyers face today.

When I came with the firm, the only person that ever talked much about the "old" firm, that is to say, the firm when Mr. Morrison was still active in it, was Mr. [Edward] Hohfeld, and the other partners never, in my hearing, discussed the breakup of the firm in 1924. Mr. Hohfeld did. He took great pleasure in telling every new associate just exactly what had happened from his point of view. His point of view, of course, being the Hohfeld point of view and not the Brobeck point of view.³

Business Counseling and Early Clients

Hicke: Well, let me ask you a few questions.

Austin: Yes.

² The 16th Amendment to the Constitution, passed by Congress in and ratified in 1913, enabled Congress to pass income tax law. In 1913, the first income tax law was passed as part of the Tariff Act.

³ The Morrison firm split into two firms: Morrison, Hohfeld, Foerster, Shuman & Clark; and Dunne, Brobeck & Phleger.

Hicke: We talked a little bit last time when we met before, but not on the tape, about the beginnings in the late 19th century of the practice of business counseling, which hadn't been very well known for lawyers before that. Do you know anything about that?

Austin: Well, yes. Before 1900 there was very little regulation of business. For instance, my grandfather was a prominent lawyer in western New York. He used to maintain that he knew every case in the New York Court of Appeals reports. And he probably did, because there weren't all that many. There were maybe, I don't know, ten or fifteen volumes, something like that. So it was possible.

And as I say, I think the emphasis that you get from all this is the simplicity of the problems in a legal sense. They were not the complex legal problems involving health, environment, regulation--all the things that we face today. The problems were fairly simple, and the problems for the fledgling corporations that were growing up at that time involved not terribly different legal concepts than those that lawyers had been accustomed to handle for individuals, so that it wasn't much of a step to go from one to the other. At least, this is my impression. Obviously, I wasn't there at the happening.

Hicke: Now in the West we had the gold rush first, then the rise of the silver kings, and of course Charles Crocker came along, and the Crocker Bank was an outgrowth of all of that, so . . .

Austin: Well, the firm was involved in a great deal more than just the bank. The Crocker interests were very, very far flung. They had a company called the Crocker Estate Company, which had vast holdings of real estate and miscellaneous companies. They were in the cement business through the Santa Cruz Portland Cement Company, to name the essentials.

And the same thing was true with the Spreckels family, whose primary activity was in sugar, but at one time they owned a good deal of San Diego: they owned the utility down there, they owned the hotel down there, and other interests. In addition, reaching over to Hawaii, there were the sugar cane growers and some of these the Morrison firm represented because of their representation of the Spreckels sugar companies.

And then they were in the oil business, which was a fledgling industry in those days, through Honolulu Oil Corporation.

Hicke: How did that come about?

Austin: I couldn't tell you exactly how or when Honolulu Oil got started or became a Morrison client. That would be an easy historical thing to find out.

Hicke: Sure.

Austin: But in any event, the firm was involved in that sort of activity. So for a firm as small as it seems to us today, we wonder how it was possible to represent as many varied and, for their time, large clients, and I guess the answer is that the legal problems involved were a great deal simpler than they are today but the judgment calls probably weren't any easier.

Bear in mind to these men, the practice of law was a profession. It wasn't a business. They were lawyers because of the mental stimulus and excitement they got out of the practice, in contrast with some of the prevailing notions today in certain quarters--thank God, not in this firm--that the practice of law is just an avenue for making money, and you get a very businesslike attitude about what matter you'll take or won't take.

But to go back to the old-timers, it was a small club in every city. Every lawyer of any consequence knew every other lawyer, and they were very much a breed apart from the businessmen. This was like being a doctor; it was a distinct profession. And these men had a very, I would say, balanced sort of way of approaching things. They practiced law, they sat on charitable corporations, they spent time with their families, they traveled. As I hear and read about them, they never seemed to have the kind of incessant pressure which, looking at the young people today, it seems to me is reaching a very, very high point. And others would have to judge the quality of the result, as to which was better.

Well, I guess there's no such thing as better, because it's so different, but in any event it was a very satisfying, relatively non-stressful existence, as I have understood it from reading and hearing people talk about it.

Hicke: Do we have any idea how Crocker and Spreckels came to Morrison?

Austin: I've never heard how Mr. Morrison got his first contact with Charles Crocker. He was a relatively young man at the time. That's a very interesting question, and I just don't know the answer. I've never heard anybody discuss that. And I don't know that there are any records that would tell us. Did [J.] Hart Clinton have anything to say about that?

Hicke: He was told that Morrison had tutored one of the Crocker family while attending Hastings law school.

Austin: In 1883, he must have been how old? You probably have the date on that.⁴ As I remember, the Crocker Bank was organized in 1870, and so it was organized before Mr. Morrison became counsel to it. It's always been my impression that at some time in the middle '80s he became William Crocker's counsel and represented the bank and the other Crocker interests. Now, as I say, there's a big blank there as to how that occurred. I can't give you any line on that one. Charles Crocker was a relation of William's.

Hicke: And the same with Spreckels. You haven't heard anything about that?

Austin: No. Not a thing.

Hicke: Well, last time when we were talking you also pointed out that the Sherman Antitrust Act came along.⁵

Austin: Well, in a business sense, that was your first big piece of what you might call regulatory legislation. After that things came along pretty fast. You got the Federal Reserve Act [1913] and the Federal Trade Commission Act [1914] in the early days of the first [President Woodrow] Wilson administration, and after that business practice became a little more complicated.

Hicke: So then these businesses would have had much more need for counseling, as well as for somebody to handle their litigation and problems.

Austin: Yes, it was more than just litigation, because as the administrative complexities increased, the need for business lawyers also increased.

Hicke: Okay. Do you know any more about Morrison's clients?

Austin: All I know about them is that they were the foundation for both the Brobeck base and the Morrison/Hohfeld base. So they must have

⁴ Morrison was born on February 22, 1856.

⁵ Sherman Antitrust Act of 1890, 15 U.S.C.A. Sec. 1-7.

had a pretty good stable of clients to be able to fill the needs for two different law firms.

It's interesting: my senior partners just didn't talk about those things very much. They talked about what they'd done on vacations. Mr. [Leon] de Fremery, the tax partner, used to like to talk about going over the Sierra [Nevada Mountains]. It would take him fourteen hours and three tire changes to get over to the Nevada side. That was the sort of thing that interested them. If they had any interest in the firm history, they never exhibited it to me. So, that's why my recollections are pretty scanty.

The Morrison Trust

Hicke: In one of your speeches about the firm's history, you talked about the Morrison Planetarium and the Morrison Rehabilitation Center. Those were only two of the things established in Mr. Morrison's name.

Austin: Well, that takes us back to Mr. Hohfeld, because when Mr. Morrison died (Morrison and his wife had had no children) there was a Morrison trust established, and I think it was probably close to a million dollars that was put into this trust.

Mr. Hohfeld was an extraordinarily able businessman and investor, and all through the turbulent years of the Depression, he was churning out money for the Morrison trust. He gave away well in excess of the amount of the corpus that he was handed when Mr. Morrison died. And then since the trust had a termination date--I forget when that was, but it was back in the '50s--why, Mr. Hohfeld was frantically trying to get rid of this trust money, because he'd made so much money for the trust that it kept increasing all the time. He finally distributed it in time to meet the terms of the trust.

It's a point to remember, because some lawyers are very good at investing and some aren't, it's not a characteristic of lawyers particularly. In fact, in my experience, the number of really canny investors who are lawyers that I've known are rather few. And I always thought that Mr. Hohfeld must have been as much a good businessman as he was a good lawyer, and that kind of experience and wisdom would have come in very handy during the Depression years when many of his corporate clients were being reorganized and going through the wringer and coming out. He

would have struck me as being particularly suited for that kind of work.

But as to the Morrison firm prior to Mr. Morrison's death, I don't have too much to offer, I'm sorry to say.

Hicke: Well, you've already told me quite a lot. One think I wanted to ask: I know what the Morrison Planetarium is, but I don't know what the Morrison Rehabilitation Center is.

Austin: It's no longer in existence, I believe. But what it did--and I had personal experience with this, because in the middle '50s I lost my voice, and I had to go to a voice therapist to get it back, and the person that I went to recommended that I go to the Morrison Rehabilitation Center. So I went there, and there was a doctor named Jones who was the crackerjack at teaching people to talk again and he helped me enormously.

And just to digress personally, just to give you an illustration of the sort of thing they did, this fellow was teaching me to get the voice coming from the diaphragm, which is the way people normally do, whereas I have a tendency to kind of talk up here in my throat, and that puts more strain on it.

There were people in there who had been in lumbering accidents and all kinds of industrial accidents, and this rehabilitation center was teaching them to use their arms again and fitting them with artificial legs and all this kind of business. Now why this shut down, why it isn't in existence anymore, I don't know. The trust was something Mr. Hohfeld sort of ran out of his pocket, not out of the firm's. So except for this personal experience I had, I didn't have any other experience with Morrison trust activities.

Hicke: Well, that's very helpful. It was sort of physical therapy?

Austin: That's what it was, yes. And of course, the Planetarium speaks for itself. It's one of the finest in the country, and Mr. Morrison and Mrs. Morrison and the trust did a number of very worthwhile things for the City.

You know, these things germinate in an institution, and one of the reasons that I think the firm is as generous as it is today is because this tradition has been handed down from one group of senior partners to another group.

Hicke: A sense of civic responsibility.

Austin: Yes.

Hicke: I know there's a Morrison reading room over in the library at Berkeley, and I know there are other things over there, too, at the law school.

Austin: Oh sure. Well, as I say, this fellow was, even before and during some of his peak years, say from 1895 to 1915--that's twenty years--he was practicing in a time when his services were in great demand, and there was no income tax, so his cash flow must have been pretty good.

May Morrison and the Dissolution

Hicke: Another thing we're interested in learning about if we can is the role of May Morrison. There's some sense that she had something to do with raising Roland Foerster, perhaps semi-adopted him after his father died. Did you hear anything about that?

Austin: Well, I knew that he was very close to the Morrison family, but it's interesting that although I was very close to Mr. Foerster, he never talked very much about his personal life before, well, the time I came with the firm. He'd had a very unpleasant divorce. I don't even know when that occurred, but in any event, obviously it was something he wasn't terribly interested in talking about. And then, of course, his son came with us. Well, that's going to come later on, we'll talk about that.

It's interesting, when you start trying to pin me down on these things, how little we know about the early firm, really. And I always thought that either Judge Holloway or J. Hart Clinton was going to write a history. They were going to get their notes together and give us a shot at how the firm had come along, but it just never came to pass.

Hicke: Well, Hart did write some of the history, and I interviewed him also. He has some interesting things to offer, but since he came after the dissolution, there's still a lot missing.

Let's talk a little bit about the dissolution. I don't know if you have anything more to offer on that?

Austin: Well, Mr. Hohfeld explained about the dissolution to every one of the present senior partners, so that it'll be interesting to see if we all tell the same story.

Hicke: Yes.

Austin: The way I heard the story, the Hohfeld group showed up one morning, and the locks had all been changed on the firm's office--a sure sign the firm was breaking up--and so then there was a wild scramble to see who would get which clients. You've probably seen the letter Mrs. Morrison wrote to Mr. [W.I.] Brobeck, which is a very interesting commentary on the times, that the widow of a former senior partner would determine where the name "Morrison" would go.

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Hicke: As you said, this wouldn't happen in today's times, and that's why I wanted to ask a little more about her role. Did she have an important influence in the firm?

Austin: Well, she must have had; according to Mr. Hohfeld, she's the one who decided that the Morrison name would go with the Hohfeld group rather than the Brobeck group.

Hicke: But was she instrumental in the firm in other ways before Mr. Morrison died or after he died?

Austin: I never heard that she was.

Hicke: That's the only thing we know about her influence?

Austin: The only thing we know about her is that she gave Hohfeld's firm the Morrison name, which, equally surprising, convinced Mr. [William H.] Crocker and Mr. [John D.] Spreckels to go with this fledgling firm.

Hicke: We might think also that Mr. Hohfeld had some attraction for them. As you said, he was a good businessman, and perhaps they recognized that?

Austin: That's true, but he himself was fond of saying that they got the Crocker business and the Spreckels business because Mrs. Morrison insisted that the name go with his firm. Mr. Hohfeld was not a person who was lacking in self-esteem, so that I can't imagine that wasn't the way it went.

Hicke: Now this is really interesting that she had that much to say.

Austin: I don't think she had any say in the operation of the firm as such. I am sure she didn't play a part when they were first getting going in the economics of running the firm.

I am sure that Mr. Hohfeld, to use the word bankroll, bankrolled the firm. Nobody has ever told me that, but I am absolutely certain of it, because these other younger partners wouldn't have had the money to do it. He, having been in the firm longer, would have.

Then, of course, they had an extraordinary break in the successive deaths of the Spreckels brothers, and at the time the Morrison firm probated at least one of these estates. I believe they were the biggest estates that had ever been probated in California. These estates were probated in the Depression, and the legal fees from that would have been very, very substantial when coupled with representing the Spreckels generally in all their activities. And that was certainly the foundation of the respective fortunes of the senior partners, my senior partners who with the money from probating these estates bought a lot of client stock cheap, and as time went along, why that stock increased in value.

Hicke: Spreckels?

Austin: Well, they bought Spreckels, they bought Food Machinery [and Chemical Corporation], they bought Honolulu Oil Corporation, they bought bank stock, they bought all these things, which is an interesting commentary on the times, because nowadays, under the way the firm is run today, lawyers aren't supposed to buy the stock of clients. Whereas when I started practicing law, that was considered a normal, natural thing to do.

Hicke: And perhaps showed confidence in the client?

Austin: That's right. But no more. And I don't need to go into the technical reasons for that. They are there, and anybody who's interested in them can certainly find out. It's questions of disclosure and inside information and that sort of thing.

Hicke: I wonder if maybe research will turn up some social connections or family connections that Mr. Morrison had with the Spreckels or the Crockers.

Austin: I don't think so. Reading that letter, you don't get that impression. No, I don't think so. I don't believe I ever heard anything to the effect that Mr. Morrison and Mrs. Morrison were very socially close to the Crockers or the Spreckels.

Hicke: I also have gotten a sense that people who stayed with the Morrison firm were crucial because they offered a more well-

rounded expertise to the firm. In other words, had they gone with Brobeck, their skills would have been missed.

Austin: Well, I never heard anybody say that on the split-up of the firm that the Morrisons got better legal ability than the Brobecks did. I don't think I ever heard anybody discuss that issue. I wonder where you got that idea.

Hicke: Again, I will have to go back and look that up.

Austin: Because, didn't Peter Dunne go with Brobeck?

Hicke: That's true.

Austin: Both Mr. Brobeck and Mr. [Herman] Phleger were coming into prominence at that time. I mean, these were some of the outstanding lawyers in San Francisco. Whereas at that time, the only really well-known lawyer on the Morrison side was Mr. Hohfeld. Well, Mr. [Herbert] Clark probably was, to a certain extent. Foerster's, Clark's and [Frank] Shuman's reputations developed later on.

Hicke: I think that it wasn't so much their reputation as that they offered a diversity of skills.

Austin: I don't know where you would get that idea, because if you are talking about diversity of skills, Herman Phleger was just one of the great lawyers in San Francisco, and talk about diversity of skills: he could do anything. He demonstrated in his career a greater range of skills, in my judgment, than Foerster, Shuman, or Clark ever did.

Hicke: The fact that Hohfeld did finance the firm for a while was another topic I wanted to discuss, but you've said that you think that's the case here.

Austin: I am just assuming that knowing something of the status of these people at that time--we are talking about 1925--I would have guessed that he would have had to be the one, because none of the other three at that time had achieved the positions that they later had. Roland Foerster was just a young lawyer. Frank Shuman was not that young, but he hadn't hit his stride yet as one of the outstanding bank lawyers, and Mr. Clark was developing a reputation, but he didn't have the reputation then that he had much later, when he had the truly national reputation. Nobody else in the firm had one; he did.

Hicke: Well, there certainly was a lot of potential there, if not actual skills. You talked a little bit about the firm during the Depression.

Austin: I was thinking about that this morning. This is where Mr. Hohfeld's skills just came on like gangbusters, because so many of the corporations in the United States had trouble, and they had to be reorganized, and I think J. Hart Clinton probably gave you a pretty good story on this one to the effect that Mr. Hohfeld was right in the forefront of the major reorganizations which occurred in San Francisco. I am thinking primarily of hotels, because he was instrumental in the reorganization of the Mark Hopkins, the Leamington in Oakland, and the Senator in Sacramento.

Hicke: Well, Hart told me about the Leamington, because he took that over, but all the rest of it, I don't have much information on.

Austin: Well, I don't have any great information except the fact that that's what happened. I would guess, judging from what I know happened in the East--because I caught the tail end of that when I first started practicing in New York--that Mr. Hohfeld would have developed a reputation as one of the outstanding reorganization lawyers in San Francisco, and accordingly he would get a call for his expertise and advice.

Hicke: Can you think of any other examples?

Austin: Of anything else that he reorganized? I can't think of the names of companies, but having known the man, and this being one of his great skills, I find it hard to believe that he didn't have the position I am suggesting he had. Now you ask me for concrete examples other than the hotel reorganizations. I really can't give them, because they are the only ones that were going on when I got here.

Hicke: Well, that gives us some idea of what to look for in the files. Which reminds me, do you know anything about the earthquake in 1906?

Austin: No. I don't know a thing about that. I don't know what the impact on the firm was, where the firm was located. Was it in the Crocker building? If it was in the Crocker building, the Crocker building was not demolished. I think it was gutted, but not demolished. I can recount one amusing anecdote. Our docket clerk, Mrs. Klopeck, always claimed she walked away from the fire but would never admit to being a day over 65.

Early Partners

- Hicke: Well, let's see. You've talked about Mr. Hohfeld in the early days. Do you know anything about Thomas O'Brien, who was Morrison's first partner, and then there was Dangerfield and then Constantine Foerster.
- Austin: I know nothing about Mr. Foerster except that he sired one of the greatest lawyers and warmest people I have ever known.
- Hicke: Good. We will talk about him in a minute. Walter Cope?
- Austin: No. Now you've got to remember I am an eastern boy. I didn't grow up here. I came out here in 1946 when I was thirty-two years old. Really, that's my starting point.
- Hicke: Was Leon de Fremery still in the firm?
- Austin: Very much so.
- Hicke: Do you know anything about his early practice?
- Austin: Mr. de Fremery's family is an extremely old and well-known family in Oakland. There is a de Fremery park, and there is a place in downtown Oakland which is run down now, but in the old days I guess was one of the prime places to live, and the de Fremery's lived there. We will talk more about him when we get to '46.
- Hicke: I think most of the people that then came were probably still here when you came. Forrest Cobb and H.A. Judy?
- Austin: No, Judy had left. The people who were here when I came--that was one of the things I did this morning--there were ten partners. There was Herbert Clark, Roland Foerster, Frank Shuman, Judge Holloway, Forrest Cobb. We used to have a proprietary and nonproprietary partner arrangement, and I think I am right that those five were the proprietary partners when I came here in 1946. I guess maybe de Fremery was a proprietary partner. I rather suspect that Clinton, Hutchens, Kries and [Wendell] Fitzgerald were not. Hart later became a proprietary partner.

So they were the ten partners, and Mr. Clark was the principal litigator. He was a good business lawyer, but his first love was litigation. Roland Foerster was in corporate finance and corporate. Shuman was a bank lawyer. Holloway worked a lot with Foerster. Cobb was down in San Diego doing San Diego railway and other Spreckels interests work there.

Hicke: That was really sort of a very early regional office?

Austin: Yes. Clinton was labor. Hutchens, who was the son-in-law of Shuman, was general. Kries was general. Leon de Fremery was tax, and Fitzgerald was probate. The thing that absolutely stunned me when I first came here was that Kries had just been made a partner in January of 1946. I came in March, and he had just been made a partner in January. He had been an associate, I believe, for twenty-one years. That is quite a long time to be an associate. I may be wrong on that. Maybe it wasn't twenty-one years, but it sure was a long time.⁶

Hicke: Do you have any sense of why that happened?

Austin: Well I guess they didn't really think he was all that good.

Hicke: But then eventually they did?

Austin: Well, eventually they made him a partner. I can't fathom what the decision-making process was there. I just can't imagine how that thing worked.

I said twenty years. No, it couldn't have been that long. Do you have his entry date? Let's get this thing accurate.

Hicke: In 1929 Kries was an associate. I found him listed. I don't have the date that he actually came.

Austin: I suspect it was earlier. So maybe it was eighteen years rather than twenty. But anyway, it was an extraordinarily long period of time that he was an associate. But you were asking me some questions.

Clients

Hicke: I was asking about the early partners, but we will talk about some of these when we get to 1946. Do you know if the Paraffin Company, called Pabco in 1929, was a client? Do you know anything about what work the firm did for it?

⁶ By 1929, Kries was an associate, but it is uncertain when he was hired.

Austin: Well, I thought Pabco--which is now Fibreboard--was one of the clients that went with Brobeck because, for instance, my son-in-law is a partner in Brobeck, and Fibreboard is his account. There is no question that Fibreboard (Pabco) has been a Brobeck account for some time.

Hicke: They must not have gone in the split, or at least according to the records I found they didn't, because I have them in 1929 as a client of Morrison & Foerster.

Austin: Well, maybe the Pabco people at that time split the business, they used both sets of lawyers. Certainly by the time I came with the firm, Pabco was very definitely a Brobeck client and was not a Morrison client.

Hicke: How about Matson Navigation Company?

Austin: Same thing. Absolutely. For many years Matson Navigation Company was owned by the big Hawaiian sugar companies--Alexander & Baldwin, C. Brewer [& Co.], Castle & Cooke, American Factors, and Theo, Davies and Co. By their ownership of Matson they controlled the only means that anybody on the islands had of getting anything to or from the mainland, because there was then no aviation. By the time I arrived on the scene, Mr. Phleger and other partners in Brobeck represented these people and also Matson Navigation Company. Now there is a story on that that you might put in your notes to remind me to tell you when we get to it.

Hicke: Since you're thinking about it, do you just want to put it in here?

Austin: It was kind of interesting, because as I say the Morrison firm had nothing to do with the Big Five. The head of A&B was A.C. Catigan--I really don't know to this day why he came to me. It is possible that Ted Meyer, who was one of the senior partners at Brobeck, may have recommended me; I don't know. But in any event, he came to me because he was concerned that Matson Navigation Company was going to have problems, because of the ownership of the company by these five companies, and that this would cause antitrust problems and other regulatory problems.

I represented A&B--I say "I," the firm did, but I mean I was the firing arm, so to speak. What happened was I ran the study that indicated these problems and in a very, very heated meeting, these Big Five executives were jumping all over me. They were all much older, but they finally bought Catigan's argument that only one of them better own Matson. So A&B bought the other interests in Matson.

Hicke: Did you handle that transaction?

Austin: Yes. The Big Five other than A&B were represented by Herman Phleger.

Hicke: Did you end up with Matson Navigation then?

Austin: Yes, for a while we did quite a bit of work for Matson and Alexander & Baldwin. As things moved on and Catigan and Stan Powell went out and somebody else came in, they got more and more in-house legal counsel, and I think they went back to Brobeck for some of their stuff that Brobeck historically had done.

Hicke: One of the things that Hart talked about quite a bit was the Foster & Kleiser Company. Do you know anything about that?

Austin: That was Roland Foerster's account when I came to the firm. There is kind of an amusing story on that. I had been with the firm about four weeks when Hart asked me to do some work on Foster & Kleiser, and I told him I didn't approve of outdoor advertising. I thought it was spoiling our highways. I thought our highways in California should be the way they were in the East, where outdoor advertising was prohibited. And so I said I wasn't terribly interested in working for him on that account.

He was pretty upset with me, and I imagine he went to Holloway and said, "We better get rid of this guy," but Holloway must have said, "No, we will hold onto him a little longer." If any young associate had said that to me, I think I would have been a little startled, because it was kind of an outrageous thing to do. I mean, after all, if you are in a firm, you are supposed to do the work of the firm. I just felt very strongly about the undesirability of outdoor advertising.

Hicke: It is an interesting question as to what you do when you have a client that you don't approve of what they do or you don't like the way they do business.

Austin: Well, of course, a lawyer is supposed to take a client and do the best he or she can with that client and with the problems that client has, whether you agree with the positions the client is taking or isn't taking. That was kind of an emotional, you might say immature, decision on my part. I think it was very kind of the partners to overlook that transgression.

But anyway, you asked me about Foster & Kleiser. I never did any of the regulatory work for Foster & Kleiser on their outdoor advertising. Later on, I got involved in the financial

reorganization of Foster & Kleiser but I didn't have anything to do with its regular business. Foster & Kleiser, like the other major clients in 1946, was ultimately sold off.

Hicke: Do you know how long it had been a client of the firm?

Austin: I was always under the impression that that was one Roland Foerster brought in, but I don't have the detail on that.

Hicke: Again, I have it listed back in the '20s.

Austin: The chances are maybe somebody else did and he just took it over, because certainly by the time I came here the five basic clients of the firm were the bank--Mr. Shuman took care of the bank; Spreckels--Roland Foerster and Herbert Clark were the senior people on the Spreckels account--for Foster & Kleiser Roland Foerster was the lead lawyer--Food Machinery was Roland Foerster's and Honolulu Oil was Herbert Clark's and Judge Holloway's. Those were the major clients of the firm and later Morrison ceased to represent them. We later got the bank back.

Hicke: Did we ask you about Herbert Hoover? We understand that he was a client of Clark's in the '30s.

Austin: Yes, he was. Mr. Clark was very proud of that and, I am sure he gave Mr. Hoover the kind of disinterested advice that Hoover needed. Mr. Clark was a very, very independent lawyer, and he didn't care what the crowd thought. He would call them the way he saw them. That was one of his strongest and greatest characteristics. He was no herd follower by any means. I imagine Mr. Hoover was looking for that kind of advice, and he got it.

Hicke: I also have a client listed as C.E. Stevens Company of Seattle. Do you know anything about that?

Austin: I don't know a thing about that. I never heard of it.

Hicke: Some of these are things that Hart Clinton gave me so I am just pursuing them to see if you know anything more about them. James Blaisdell?

Austin: Blaisdell was Mr. Clark's son-in-law. His daughter was married to Blaisdell, and at one time Blaisdell was a partner in the firm, and he was in charge of the labor work of the firm. They were kind of closed mouth about some of these things, and nobody ever told me exactly why Blaisdell left the firm and went to Honolulu and took over a trade association in Honolulu and did that work. Hart slip-streamed in behind Blaisdell and took over the labor

work. Blaisdell was Mr. Clark's son-in-law, and of course Hutchens was Shuman's son-in-law. They had some nepotism going on in the firm in those days. I have always opposed that kind of nepotism as being primarily unfair to the weaker link. Of course nowadays with "friends," husbands and wives in the picture, it's hard to draw a fine line.

Hicke: I think that was pretty much standard procedure in those days.

Austin: Well, I suspect so.

Hicke: Tom Wilson has found J. Barton Phelps and talked to him. Do you recall him?

Austin: Oh sure. When I came to the firm, the associates were Boice Gross, Jack McCrystal, Al Gibson, Bart Phelps, Riki Musto and George Clinton, Hart's brother. Most of those people had all been working for the firm prior to World War II, and some of them worked through World War II for the firm.

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Hicke: You were just saying Austin and [James] Durney were hired in 1946.

Austin: Bart and Jim Durney left the firm around 1951, as I remember it.

Bart's a judge now, a superior court judge. And he's somebody you very definitely ought to interview, because he's the only person living today, with the exception of Clinton who could talk to you about the pre-World War II firm, and Phelps ought to be pretty good on that because he was a young associate; so by all means, you should talk to him. And I'm sure he'd be willing to talk to you.

Hicke: I was interested to learn that he's a Democrat, at least he was when he was hired. And, of course, I have always heard that you were the first Democrat after Morrison . . . Maybe you were the first partner.

Austin: Well, yes after Morrison.

Hicke: Okay.

Austin: But I'll yield first place to Bart. He's a good man.

Hicke: Well, actually, Alexander Morrison was the first Democrat.

Austin: I'll yield my place to Bart, because he certainly preceded me in the firm.

Hicke: We're finding more and more of these early Democrats.

Austin: Sure.

Hicke: Okay, let's see. Do you have any notes that you made on this early period that we haven't covered?

Austin: No, I think you've gotten what little sparse information I have about the firm before World War II, before 1946.

II AUSTIN FAMILY BACKGROUND AND CHILDHOOD

Grandparents

Hicke: Well, why don't we do a switch then? I didn't send you an outline for this next part, because I didn't think we'd get to it so quickly, but maybe we could go back and get some of your background now. I'd like to start by hearing about your grandparents.

Austin: Well, my maternal grandfather, as I've already told you, was a lawyer in western New York, a very brilliant lawyer. I think he had a substance abuse problem, an alcohol problem. And he died at the very early age of fifty-one. My paternal grandfather had a dry goods store and a savings & loan association in a small town in northern New York. And he also died before I was born; so I never knew either of them.

Hicke: Last week when we weren't recording, you told me a little about your grandfather's law practice in New York. Could you elaborate on that?

Austin: Well, yes, he had quite an extensive practice. Very interesting, considering the lack of speed going from point A to point B in those days, he was the general counsel for the Steuben-Corning Glass Company, which makes the Steuben glassware. Corning is in the Genessee Valley, and it's a far piece from Hornell where my grandfather lived and practiced.

I think that grandfather also had an insurance business that he ran on the side, because my uncle, I know, took over a relative's insurance business. Now maybe he didn't; maybe my uncle just started that from scratch, I'm not sure.

But anyway, that's the genesis for me, the Austins and the Pages.

Hicke: Another question about your grandfather. Did he do litigation for the Steuben Company?

Austin: He did everything, just the way lawyers in those days did. I mean, he was a business lawyer, a litigation lawyer, anything that came along he did, whether it was popular or unpopular, in the good old ethic of the time.

The other grandfather had a rather interesting background. Our family, the Austins, had bet on the wrong horse in the Monmouth Rebellion of 1685 in England, and they were not sufficiently prominent to be beheaded when James II finally beat the bastard son of Charles, Duke of Monmouth, but they took people like my ancestors, middle-range people, and sent them to the island of Barbados as indentured servants.

And these ancestors of mine were indentured servants for seven years. When I was in Barbados one time I went and looked the records up; it's kind of interesting. So they sat around Barbados from 1685 until the middle of the 19th century, when there was a very bad yellow fever epidemic. All the Austins were wiped out except for one baby boy, and they shipped him up to relatives in Canada, and that was my grandfather.

He and my grandmother were living in Canada at the time my father was about to come, and my grandmother, who came from an old Yankee family, was determined that her son was not going to be denied the right to be president of the United States by being born in Canada. So she got in a buckboard and she got about ten miles over the Vermont line when her hour came, and she stopped in a little town called Frelighsburg, Vermont, and that's where my father was born. So that's the background.

Hicke: That is interesting! Did she then stay?

Austin: No, they finally moved down to Canton, New York, which is where St. Lawrence University is, up there in northern New York, and as I say, he ran a savings & loan, and he also ran this dry goods store. But he died in his early 60's, and my father died when he was fifty-three. So the family males have been kind of short-lived. So the fact that I'm going to be seventy-six later on in May means I'm kind of setting a record.

Parents

Hicke: When was your father born?

Austin: He was born in 1876. He worked for the railroad for quite a long time, and he got up into middle management, but as railroads were run in those days, it just didn't look like he was going to get much higher, so he went into the banking business.

National banks in those days were not permitted to have trust affiliates--that has to do with trust business, acting as trustee and that sort of thing. Just before the United States went into the war with Germany, the Chase Bank got my father to organize a bank called the Mercantile Trust Company, which he did in about 1917, something like that. Then in 1922 that bank was merged with another bank, and then in 1929, the Rockefellers liked the management team that my father had and so they merged his bank, which was much smaller, into Equitable Trust, and it was one of the first billion-dollar banks in New York. Of course, that doesn't sound like much money today, but it was quite a bit in 1929.

That merger was consummated in September of 1929, and my father died in December of 1929 at fifty-three of a heart attack.

Hicke: And in between was the crash.

Austin: Yes, in between was the crash. Well, the crash didn't affect him personally, because he had felt all along that things were out of order and in August and September he sold all the securities that he had except his bank stock.

Hicke: He was very astute.

Austin: Well, I don't know. But, anyway, that's what he did. So that's where I come from.

Childhood

Austin: My father chose to live in a very simple community in New Jersey, Upper Montclair, and actually there was a corn field right next to our house. He always insisted that I have no better opportunities than any of the kids I was going to school with. In fact, he was tougher on me than their parents were, because I can remember one

time I went and asked him for an allowance-- I don't know if this has got much to do with the history of the firm?

Hicke: Oh, yes, yes.

Austin: I was getting a nickel a week and I told him, "Father, I can't buy a soda for a girl on five cents." And my father looked at me in perfect astonishment. He said, "Why, that's extraordinary." He said, "Maybe you should get into business." I said, "Well, what business would you suggest I get into?" He said, "I'll tell you what I'll do. I will buy you a hand press--[printing press]--and it'll cost about fifteen dollars. I'll loan you the money, and you'll have to pay 10 percent interest on that money. You go down in the village of Upper Montclair and you'll find that those merchants will be very happy to have you print the throwaways the merchants use."

So I did this, and I became an instant millionaire. I mean, I'd have as much as two to three dollars of pocket money--this is back in the '20s, you understand, early '20s--so I was just a millionaire. Take a girl for a soda, my God, I could take the whole class for a soda.

So I learned a little bit about finance and business in that way, and it didn't take too much of my time. Maybe I still could play ball every afternoon, and I'd get my work done at night. I'd print maybe for forty-five minutes to an hour and a half when I came in from playing ball. So it worked out fine.

Hicke: Your father sounds like a very wise person.

Austin: He was just the greatest man I have ever known. He died when I was fifteen. Now whether I would say that, I probably didn't see the warts as clearly as I would have later, but . . .

Hicke: I'm sure you saw enough to know.

Austin: He was a great fellow.

Hicke: Well, tell me about your mother.

Austin: My mother came, as I say, from western New York. She went to Vassar [college]. She was an extraordinarily interesting person. I think it's accurate to say that she organized the first nursery school that was ever started in the United States; at least that's what a lot of people think. She had a child at the age of thirty-nine, which was kind of late in those days, and two of her friends were in the same unfortunate condition, and they were all very

active people and their other kids were all in school, and here they have these babies. So they just sort of had this working arrangement that one would take the kids for one day, and the other would take them the next day. They got it more systematic, and more people got into the act, and so that's one of her, I guess, claims to fame. Whether it's true or not, I don't know. But that's the family legend, so to speak. And she lived to be about just short of eighty. She died in 1962.

So that's my background. I came from the East. I went to Andover.

Hicke: Did you have brothers and sisters?

Austin: Yes. I had two sisters. My oldest sister died of cancer last September at seventy-nine, and she had always been very strong in social work. She worked for private agencies and then she decided that wasn't a useful place to be so she went to work in San Jose for one of the state agencies, and she learned to speak Spanish. She had a lot of Spanish clients.

My other sister, my younger sister who's still living, is much younger than my older sister and me.

Hicke: She's the one who was born later when your mother was thirty-nine?

Austin: Yes, she's the one who was born in 1922, whereas I was born in 1914. She became the first woman producer of plays on Broadway, and she's now producing off-Broadway; because of the amount of money, time and effort it takes to put something on and because people are not willing to invest in innovations, which she's interested in. For instance, I've heard people say that the schematics of the play Cats was something that she had developed.

So anyway, that's our family. And my deceased first wife came from a Long Island and Virginia family. They were very big in the horse business, and I guess one of the reasons we came out here was that we didn't want to get set in the sort of stratified society that we would have been in in the East. So we came out here. We didn't know anybody, so we had a chance to make our own life, which was kind of fun.

Hicke: You would have had a predetermined social life?

Austin: Well, yes, it would have been because of where she went to college and where she went to boarding school and where I went to college and where I went to boarding school and all that.

Hicke: I want to get into your education in just a minute, but first can you tell me: there's obviously a lot of talent in your family, and I'd just be interested to know what kinds of family traditions and standards were prevalent.

Austin: Well, as I say, my father always took the position with me--he always said, "You've had many more advantages than anybody else in your class in public school has had," so I always was expected to do better.

Hicke: Great expectations?

Austin: Yes, a lot of pressure--which I certainly didn't put on my kids. I'd had all the advantages and I was expected to use them.

Hicke: And the girls too?

Austin: I doubt if my younger sister had that, because you see, she was only seven when my father died. But my older sister? I don't think it was quite as evident in her case. It may have been subtly, but I was kind of a hyperactive, rambunctious kid, and I just had an awful good time, but it took a lot of discipline.

For instance, my father was--this is so inane--my father was on the board of trustees of the local library, and I used to be in there all the time so Miss Wells, who ran the library knew me. Three of us on a dare decided that we'd walk around the second story windows of the library, and we did. Well, of course, Miss Wells didn't know these other two guys, because they didn't go into the library very much, but she knew me, because, of course, she knew my father and she knew me because I was in the library quite frequently. I liked books. And so naturally the axe fell on me. I got the usual lecture that my father was on the board of trustees of this library and what business did I have causing such disruption and this cast no glory on him, in fact, a little shame. It seems pretty silly when you think about it now, but you'd have to say that I was put under a lot of pressure as a kid. Luckily for me I had the temperament so that it didn't break me as it did one of the partners in this firm who committed suicide who came from a similarly demanding background in the East. That's Bob Homans.

I think the reason that my father wanted me to go away to school was that he felt I was just, as he said, "You're a big frog in a little pond. I want you to see if you can succeed as a little frog in a big pond." So he tossed me into Andover. Although he let me choose the school I went to, he was more in favor of Deerfield than Andover.

Hicke: Why did you choose Andover?

Austin: Well, I think I chose it because the day we went there to visit, President [Calvin] Coolidge showed up to participate in the 150th anniversary of the founding of the school. And seeing the president was a pretty exciting experience for me. I really think that was about it. I felt they had a pretty good gym and the sports program looked pretty good. You know, at fifteen, you're just making gut judgments. That's one I made. So anyway, that's what made Sammy run in the early days.

Hicke: Let me just ask one more question. Do you find that you have set the same high standards for yourself that your father set for you?

Austin: I suppose you could say that. But it takes its toll. I was a terrible nail biter, just right down to the quick, and I didn't cease biting my nails almost until I was married.

Hicke: And you liked reading and you liked sports?

Austin: Yes. I've always been just an omnivorous reader. At ten years old I was reading a lot of things that not many ten-year-olds were reading. Not because I had such a great intellect, just because I was grabbing these books and reading them. It rains a fair amount in New Jersey, and there's plenty of time to read. It's not like California.

Hicke: And what sports did you play?

Austin: In grammar school I did all the sports--basketball, soccer, football, baseball, track and tennis.

Hicke: What did you do summers?

Austin: Summers we did a variety of things. I went to camp when I was nine. My family went to Europe, and I went to the same camp that my sister went to, except that the boys and girls were segregated. But there was a fence that you could come to, and so I would go and sob on her shoulder because I was pretty homesick for a while. And then the next year we took a house in Rhode Island for the summer, and then in 1925 and '26 I went to a boy's camp, which I thoroughly enjoyed.

Hicke: What camp was it?

Austin: That was Camp Marienfeld up in New Hampshire. And then in '27, '28, '29, and '30 we went to a ranch in Wyoming.

Hicke: Did you take the train out there?

Austin: Yes. In '31 we went to Europe; didn't do anything in '32; in '33 I worked in a bank and went to the Chicago World's Fair. In '34 I went all over the United States with another fellow.

In '35 I was supposed to go to Russia with a friend of mine but he failed his military science test. He shot a cannon through a hill instead of over the hill; so he had to take it over in the summer. So I went to Russia by myself. In '33 and '34 there had been the bad famines, and '36 was, of course, the year that Stalin liquidated all the generals, and things were very tight in those years. Nineteen Thirty-Five was an open year; Stalin was relatively quiet. Things were about normal in Russia.

On the way into Russia, I met a Czech jewelry salesman and a Swedish newspaper correspondent and we decided to kind of hook up together, which was very fortunate for us, because the Czech jewelry salesman spoke Russian. Czech is very close to Russian.

So when we got to Moscow, we went into the Intourist Bureau, and they saw that this fellow could speak good Russian. They said, "Sure, you can go anyplace you want." We said that we wanted to go down to the Caucasus [mountains], we wanted to go to Kiev and Odessa and we wanted to go down to Ordzhonikidze and Tiflis." This is where a lot of that Armenian uprising business is going on now.

We ended up getting on a boat in Batumi, which is the seaport at the eastern end of the Black Sea, and we took that boat to Odessa, and then we split up. It was an extraordinary experience for a kid in college. I was a junior in college.

That same summer I lived with a German family in Munich. The mother and father were very intellectual people, and their son was quite the opposite. He was my age. He was a member of the Hitler Jugend and he would come to dinner every night in his damn shorts, wearing his dagger. In 1935, people were still willing to talk against Hitler in the intellectual circles. We used to have some pretty fierce discussions, with this young fellow being very much for Hitler and his parents and I being very much against him. I suppose he got chewed up in the Russian front. I never heard from him.

So '35 was a very interesting year for me, because I not only went to Russia but I saw Nazi Germany beginning to germinate as it did in 1935.

Hicke: Did you speak German?

Austin: Some, enough to get along.

Hicke: So with the family you spoke German?

Austin: No, they spoke English, but the boy didn't speak any English; so we would have to speak English and German, and I could understand the German, but not now.

In '36 I worked at a Fourth Avenue factoring house in New York bill collecting. Then I went to law school in '36.

III EDUCATION AND BEGINNING WORK EXPERIENCES

College and Yale School of Law, 1936-1939

Hicke: Let's get back to your education after Andover.

Austin: I went to Harvard [College]. Majored in English History--I had intended after college to go into the banking business, and just to show you how leisurely things then were, the fellow who lived next door to me was a lawyer who was taking a year off to teach government at Harvard. He was about eight years older than I.

Hicke: He lived next door to you at the university?

Austin: In the dormitory. Along around April we were talking one night, and he said, "I think you are making a big mistake. You ought to go to law school. I think you would make a pretty good lawyer." I said, "Well, I don't know. Applications have to be in for that sort of thing in January."

Hicke: This was your last year in college?

Austin: Yes. I am in April of my last year and he says, "Oh, I don't know about that. I am going to call Charlie Clark." Well, Charles Clark was the dean of the Yale Law School.

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Austin: So he called Clark, and Clark said, "We are filled up." I heard him talking to Clark on the phone and he said, "Come on, Charlie, good grief, you have got room for one more fellow, haven't you?" Clark said, "You send him down and let him take the legal aptitude test. If he does okay on that legal aptitude test, we will take him." So I took the legal aptitude test, and I guess I must have done okay because I was accepted.

I went down to the law school with one of my very good friends in college who was my roommate in law school. It was very interesting, because prior to 1936, not very many people from Harvard went to Yale Law School--maybe one or two a year. And suddenly in our year, I think there were fourteen of us in Harvard who went down to Yale Law School. This was quite a shift.

Hicke: Why did that happen?

Austin: Well, in John's and my case it happened because we thought the Harvard Law School at this time was in a state of disarray. Dean [Roscoe] Pound was pretty old, and the school was kind of coasting on its reputation. That was the way we saw it. And here was Yale, which was coming up very fast and offered some pretty exciting teachers. So we decided, sure, we would go down there.

It was also very small. We had I think something like 130 in a class, which isn't very many compared with Harvard, where you had 300-400. It was a good experience.

Hicke: I am really amazed that you decided so suddenly to go to law school.

Austin: I am a little amazed too, when I stop to think of it. Well, I went down to see some of my father's old friends in New York, and they all said that it couldn't do any harm. "It might do you some good, and you might find you wanted to be a lawyer." They said there was no down side to this and there was a possibility of an up side. So, I listened to my elders dutifully and I went to law school. Here I am fifty-some years later.

Hicke: That's really amazing.

Austin: Well, or course those legal aptitude tests are pretty revealing. Yale swore by them then. Now everybody swears by them. They won't tell you, of course, whether you are going to be a successful lawyer or not, because that depends on a lot of other things, but it will certainly tell you whether you have an aptitude for law.

Hicke: And you really had never thought about it prior to that?

Austin: Well, my grandfather had been a lawyer, but no. In my Harvard Yearbook for the senior year, if you look at it it will say, vocation: banking. It never occurred to me when I filled that out that I was going to go to law school.

In my lifetime I have had some extraordinarily good luck and some extraordinarily bad luck. I lost my father at fifteen, I lost my best friend to suicide at twenty, and I lost my darling first wife when she was forty-five years old. Yet on the other hand, I have had extraordinary good luck surviving Normandy, in my practice and in finding another woman (my wife Betty) that I have been equally happy with but in a very different way, and my kids have all turned out to be great kids. So I really don't have any beefs, and this firm has done things for me that are unbelievable. I think I am pretty fortunate.

Hicke: Going back to law school. What do you recall of your colleagues and your professors?

Austin: Well, I can tell you very definitely about my colleagues, and my impression then has been born out by events. We used to say, my roommate and I, that never again would we be associated with as many interesting, brilliant people as the 130 people that we were associating with at the law school, and I would have to say time has proven that is true.

Hicke: Let's start with your roommate; who was he?

Austin: He was a boy from Belmont, Massachusetts, John Clark, who went to Harvard and went to Yale Law School. Both of us went down to New York before World War II. He was a skipper of a PC boat in most of the big invasions in Europe. I was on a destroyer on some of those invasions. After the war, he went to Providence and became an outstanding labor lawyer in a town which was losing mills left and right, and yet he kept a very vigorous practice. He was just a very remarkable person. He died a year ago.

The intangible quality of this man is just very hard to describe. You couldn't say he was this, this, or this, but just the totality of the man was somebody everybody instantly liked and trusted. He was that kind of person. A very quiet demeanor and not one of these blowhards. Just a wonderful guy.

I still say in retrospect that never have I been thrown together with 130 people with greater potentiality than those people were. It was a very stimulating thing to be at Yale Law School at that time.

Hicke: Who were some of the others, do you recall?

Austin: And what have they done? Well, one of them was Lloyd Cutler, who is certainly one of the outstanding lawyers in Washington. He was counselor to President [Jimmy] Carter. He served on a lot of

boards, things of that kind. I think he is over in Europe preparing for 1992 when the European Community gets in place. Lloyd's a great guy. He lost his wife a couple of years ago, unfortunately. He's happily remarried.

He's a real Renaissance-type lawyer. You don't see very many of those anymore. Lloyd could do anything, any field of the law. He never did specialize. Yet people were getting him in on the most intricate types of things, including very, very specialized fields like securities, mergers and acquisitions, and things like that. That's a narrow specialty that people spend their lives in. I remember Lloyd took one of the leading cases, turned the case around with an entirely new theory, and won it. He's that kind of a person.

I'd say the interesting thing about that class is that so many of us left New York; of the fourteen or so of us who went down to big firms in New York, I think only two went back after World War II. The interesting thing to me is that after the war they all went with relatively small firms in Atlanta, Cleveland, Chicago, San Francisco, Los Angeles, and they more or less worked their way up to the top and their firms are now large, leading firms. They were all chairmen of their firms, and their firms are great, big, important firms today.

I think you'd have to say of our particular class, with the exception of Lloyd, the phenomenon has been people having a hand in the growth and development of their law firms in a very top way, rather than developing as judges or legislators. We have judges and we have legislators, but this other characteristic, I think, is quite striking when you go around the country and look at the law firms and look at the people from Yale who helped develop those firms from my class.

Hicke: Law firm management was one of the . . .

Austin: One of the things. They were present at the time when these firms exploded, and they just rose with the times.

Hicke: And have you kept in touch with a lot of them?

Austin: I saw some of them for the first time in fifty years at our fiftieth reunion last fall. On the other hand, some of them, sure, I've referred business to, and they've referred business to me, and I've kept in close touch with them. So there's no pattern: some yes, some no.

Hicke: Obviously, 130 people would be a lot to keep close track of. That's an interesting comment. What about professors?

Austin: Most of the professors that I had are dead.

Hicke: Well, did any of them have any particular influence on you or were they memorable at the time you were there?

Austin: Oh yes, Harry Shulman, who is the great torts professor, and Arthur Corbin, the contracts professor, and Wesley Sturgis in reorganization, and Underhill Moore in banking. Oh sure, they were just top hole people. Now did I see much of them after I left law school? No. But every so often I would run into Myers McDougale.

There's a fellow who taught real property and who gave me the highest grade I ever got in law school. Every time I see him I keep thanking him for having given me such a good push in real estate law. He laughs.

I had a very tough break--if I say so myself--my first year in law school. Mind you, this was before penicillin and sulfa. I developed an infection in my knee, and I still have a little hole there. The infection went around to the other knee; I'll show you all my scars. [Chuckles.] In those days they operated--if you can believe it--for an infection. The result was that I missed virtually the entire second half of my first year in law school, and I never really regained my strength until two or three years later. I don't think I really hit the pads running until I went down to New York and started practicing. The result was that my grades were not as good as they would have been or as they had been at Harvard. But I think it's fair to say I could have done better if I hadn't had that tough break.

Hicke: Do you think we've covered law school?

Austin: I think so.

Hicke: Was it pretty tough going?

Austin: No, it was a very interesting, exciting experience. Very humbling at the beginning. I must say, for the first half of my time in law school, I didn't know what the hell was going on. But then things began to fall into place, and so intellectually it was a very stimulating time. As I say, it was a great group of people, and the professors were first class, and some of the notions and the ways of approaching things are ideas that stay with you all

your life. There's no question in my mind that I went to the right law school.

Hicke: Well, we've been going about two hours. Do you want to stop and continue another day?

Austin: Well, I'm not tired, I could go another hour.

Hicke: Oh well, let's go another half hour at least. Maybe we could get you up through the New York firm.

Joining Milbank, Tweed, 1939

Austin: I went down to New York and went to work for what was then the largest firm in New York called Milbank, Tweed, Hope and Webb.⁷

Hicke: Tell me about getting the job.

Austin: Job hunting consisted of going hat in hand to the firms. As I say, because my grades were not as good as the other people's who were going to New York were, I was probably pretty lucky that the senior partner in this firm, Mr. Milbank, had been a very close friend and business associate of my father's. I never knew to what extent my father's influence occasioned my getting the job at Milbank.

Hicke: That's really not too important.

Austin: I don't think really it is, because--they were always pretty frank; they'd tell you when you did something wrong and when you did something right--it was pretty obvious to me that when I left, I was on the partnership track.

Hicke: Well, that's what's important. It's what you did after you got there. Did you write and ask for an interview?

Austin: No, in those days you would go hat in hand to the firm and one or two partners would see you. They never dreamed of going to New Haven to interview anybody; that wasn't the way it was done. I'll have more to say on that later when we get to our firm. When we

⁷ Now known as Milbank, Tweed, Hadley & McCloy.

went down there, I was a bachelor. I made \$175 a month, which is \$2,100 a year.

Hicke: And this was 1940, right?

Austin: It was 1939. I have never been as rich in my life as I was as a bachelor in New York, because you'd keep getting asked out to dinner on the few occasions when you ate dinner out, and otherwise you were eating dinner down at the firm at the client's expense. Four of us had a full-time maid who did our laundry, cooked our meals, although half the meals she cooked never got eaten because nobody was there to eat them.

Hicke: Were the other three attorneys also?

Austin: Oh yes, they were all lawyers. It was really something else. It was a very exciting time, and I just enjoyed it to the hilt. I loved New York; it was just a wonderful place to be when you're a bachelor. Those two and a half years were among the greatest.

Early Work Experiences

Hicke: Well, what did you do?

Austin: You live at a pretty strenuous pace. You go to bed about 1:00 a.m. at night and you get up about 9:00 in the morning, get down to the office at 10:00, work until 1:00, grab a bite to eat, work till about 5:00. They generally had tea then. Then work again until maybe 8:00 or later. We worked in the winter most of Saturday also. Sunday was the only day off. In the summer we generally took Saturday afternoon off. We were putting in the hours. They didn't have as much emphasis on hours then as they do now, but I'm sure I was up there with 2,500 -2,600 hours a year. It was just fascinating stuff; I really enjoyed it.

Hicke: What kinds of things were you doing?

Austin: I was involved in a number of reorganizations. I also wrote the initial memorandum for the Chase Bank on the freezing of deposits, which [President Franklin Delano] Roosevelt did in 1940 when Hitler went into Holland. Of course, my memo was read by a junior partner and revised slightly, and in turn that revised memorandum was read by a senior partner, and slightly revised, and in that form it was presented to Mr. Milbank. I was permitted to go in with the two other partners, and Mr. Milbank was sitting there,

nothing on his desk but this gold pencil. God, I was just impressed as hell. [Laughs.] It was the only time I had ever been in his office. He listened, he said he'd read the memorandum, and he said, "Our advice to Chase will be to close the accounts." That's all there was to it. We all trooped out and the wheels started to move.

Hicke: And that was what your memorandum recommended?

Austin: Yes. I doubt if people today have that sense of awe that I had when I went into his office. It was big-time stuff. These kids are much more relaxed, and they see the human frailties quicker than we did.

Hicke: The thing that amazes me is that he had nothing on his desk.

Austin: Not a thing, not a thing. [Robert] Raven and [Carl] Leonard used to say, "We've got to take that pencil and yellow pad away from Austin and just let him have a clean desk. Let him go to work with a clean desk." I understand what they were saying. Your greatest contributions as you get older in the firm are your ability to attract new business, train people, make the tough calls and have a hand in setting the tone of the firm. Those are the things that really count.

Now, of course, you are just a necessity in the middle of all the legal stuff. Getting the client accustomed to the fact that you're not going to be the one giving all the answers, that over time somebody else is going to start giving the answers; and developing a feeling of client confidence in people below you is a big part of your task.

Hicke: Presumably then, as senior partner you should keep your desk clean. Keep the work off your desk and hand it off to someone else.

Austin: To a certain extent yes, as described above. Passing down clients, that's what Holloway and Foerster were past masters at: taking you along, getting you acquainted with the client, getting the client feeling that he should call you, with no sense of threat that you're going to take the business away from the senior partner. When the senior partners feel threatened and hold on, we call that a clutch, and unfortunately, there is an awful lot of clutching going on in this world. People aren't secure enough to be able to pass work along. There are some very good passers in this firm and there are some clutchers.

Hicke: So the ideal situation is that the client feels that the firm has the responsibility and not the individual lawyer?

Austin: Yes. Every client is always going to have one point person. But what you try to do is develop a feeling that the firm is an organization that has a variety of skills and talents and you should draw on these various skills and talents. Particularly the responsibility of the senior partner is the training and handing down, teaching a young person this ethic. Letting them see it in real life.

As I say, I was very fortunate, because both Judge Holloway and Roland Foerster were firm believers in that. I hadn't been here two or three years before they were shoving clients down on me, before I got to a point when I was beginning to attract them myself. That's the way law firms are successfully run. If you don't have that, sooner or later you're going to be in trouble.

Hicke: So is it your sense, then, that Mr. Milbank was able to do this?

Austin: I suspect so. Naturally, the chairman of the Chase Bank, who was then Winthrop Aldrich, would look to a variety of people in the office, but when the chips were really down, he was looking to Mr. Milbank. Without, I think, any undue modesty, I could say that when we represented Crocker Bank, there were a number of people who worked on the account, and I think I told you in one of the discussions we had earlier that when we finally got the Crocker business back, Mr. Emmett Solomon said to me, "John, I hope you're not going to run a one-man show, because if you are, you're not going to have the account very long."

A lot of people just have a great deal of difficulty in developing that particular attribute. It's a shame, because some of these people are among the best lawyers going, but for one reason or another they just can't seem to have the confidence to pass the work down.

Hicke: Is that something that you sort of learned from Milbank, Tweed?

Austin: More at Morrison. I'd see Mr. Milbank in the corridor and get out of his way. He didn't know me from Adam. He knew my father, but he didn't know me. The fellow that I worked for at Milbank, Charlie Kyle, was always pushing me out front--in a constructive way. I had tremendous role models, both in New York and in San Francisco. If I hadn't developed that, I should be kicked in the posterior, because these people that I admired so much all had these qualities.

Hicke: What other kinds of things did you learn at Milbank?

Austin: Of course I learned the lawyering skills: how to write a decent memorandum; how to analyze problems; how to parcel out the use of my time, try and make the most constructive use of my time. There was so much to do that you had to plan.

The thing that made it so easy for me was not having any family responsibilities. The worst that could happen to me was I had to call some girl up and say I was sorry I couldn't go out to dinner with her. Something like that. I wasn't even going steady in those days.

When I think of my practice, I think I have just been so lucky in the people I had around me when I was a young lawyer, and I've been very lucky in the partners that I've had. Bob Raven and I, I think I've told you before, are very different people. He comes from a background in central Michigan, and I'm an Eastern Seaboard type, and yet, despite on occasion not necessarily seeing everything eye to eye, he has never said a harsh word to me and I don't think I've ever said one to him. And yet that knucklehead, sometimes I've wanted to kick him in the posterior, and I'm sure he felt the same way in spades about me. We've had this harmonious, sound relationship ever since I was lucky enough to hire him.

Hicke: Well, we're still in New York, and you're learning to be a fast-paced and high-pressure lawyer . . .

Austin: One more anecdote. I had been with Milbank about three weeks and was working late when the phone rang. Apparently I was the only lawyer there. The message was that a plane of our client's had hit a mountain. I learned plenty about responsibility that night.

Courtship and Marriage##

Hicke: Did you get married when you were working for Milbank?

Austin: No. I didn't meet my first wife until the summer of 1942, or rather, I met her in March. It was very spectacular.

In those days, LaGuardia Field was very informal. It was the biggest airport in New York, but it was still informal. You could drive your car out to the airplane.

Hicke: What?

Austin: Yes. I had been told I was going to be best man in this fellow's wedding in March of 1942 in Boston. And I was told that one of the bridesmaids would be the sister of a friend of mine at Yale Law School, Towney Winmill, and I was to look out for her when I got on the plane.

Hicke: Did you just give me her name?

Austin: The sister's name was Josephine Winmill. So I went out to this plane, and I was just about to get on when I saw two of my friends were driving up to the plane with a girl that I hadn't met. And it turned out that this was Towney's sister. So we sat next to each other, and I never had such an exciting hour and a half in my entire life.

Then that summer we got to seeing more of each other, got engaged, and we were married in November of 1942. I had been very hesitant about this marriage business, because I knew that I was going to get into hazardous duty and I didn't think I wanted to make anybody a widow at that age. But this John Clark and Joe and I went out to dinner and I mentioned Clark before--he was my law school roommate, and he was in New York. He got me a little heated up with alcohol and wine--not excessively--and convinced me that I ought to get married now, not wait until the war was over. That was what I did.

Service in World War II

Hicke: So you were already in the service?

Austin: I was already in the service. I was in the intelligence service, because I was color blind, and I couldn't get a regular job in the navy. But the navy in those days was run by desks according to type of duty--cruisers, battleships, destroyers, submarines, each one had a desk.

The Navy Ivy League network in World War II was just fantastic. I could go to Washington, and on most of those desks would be somebody that I knew from either college or law school, boarding school or in New York. So I finally wrangled my way in through the back door. I got myself on a destroyer.

The captain of the ship didn't have any use for an intelligence officer--what the hell was he going to do on a destroyer? But he said he could use another deck officer, so for about two years, I was in this destroyer business.

Then, when they dropped The Bomb, I was in Pearl Harbor waiting for my ship to come out, because I was going to be in Operation Olympic, the invasion of Japan. We were going to be one of the radar picket ships right up next to the coast of Japan. And I'll be darned if the intelligence people didn't finally run me down, and I spent the last month of my naval duty drawing charts of where mines were for defusing.

Well, finally, the navy put out a very sensible system for discharge which was based on age, length of service, and type of duty. If you'd had hazardous duty, you got a certain number of points. I had the age, because I was pretty old for what I'd been doing, and I had the length of service, and I had the hazardous duty stuff, and the result was the intelligence people said, "Well, if you can find a way to get home from Honolulu--we can't give you any shipping, it's all tied up, but if you can get shipping, you're free to go home."

So I just popped down to the destroyer base and ran into a captain who was taking his ship back to San Diego the next day. And I said, "Gee, I need a ride. I'm perfectly willing to stand the watch." "Oh," he said, "I think we can work that out. We'll give you a cot just after the Number Two stack. Of course if it rains, it may be a little wet there."

I said, "I can get inside, I guess, then." And he laughed and said, "Yes. But that's the best I can do for you." And I said, "That's good enough."

So I went back to the intelligence people and told them, "Don't worry about me. I've got my ride home." And so I stood my watches and had my cot right behind Number Two stack, and it never rained, and everything was fine.

Hicke: Well, let's back up just a little bit. Where were you on December 7th, 1941?

Austin: I was playing touch football on Long Island with some friends. This was a fairly large estate, and the Italian gardener kept coming out and trying to say something to Mr. Page, who was the father of my friend, and the father was also playing touch football with us. Finally we all went into the gardener's hut and

listened to the radio, and it turned out the Pearl Harbor had been bombed. So that's what I was doing--I was playing touch football.

Hicke: Does this Mr. Page have anything to do with your middle name?

Austin: No. This Mr. Page was one of the top officials in AT&T [American Telephone & Telegraph Company], Walter Page. And his son became chairman of Morgan Guaranty [Trust Company] later on.

Hicke: Okay. So then what did you do?

Austin: Well, so then, I'd already a year and a half before tried to apply for the navy--my roommate and I both did, this John Clark I was telling you about. And as we walked out the door we saw the guy just crumple our applications and throw them in the waste basket. This was back in 1940 when we applied.

Hicke: Why was that?

Austin: I don't know. But 1942 was a different story. John went right into the antisubmarine warfare program and I went into intelligence. I had kind of an interesting experience. I started out investigating people for sensitive positions in the government. One of the people that I was asked to investigate was John Hershey, the noted author who was at Yale around the time I was at Harvard. Upon investigation it became perfectly apparent to me that Hershey was a loyal citizen.

Hicke: You were investigating for communist activities or subversive activities?

Austin: Yes. But my superior dinged him, and I requested a review by his superior, which I got, and he dinged him. And so John Hershey was spared a dull time in the army and the navy, and he went on to write A Bell for Adano⁸ and all those marvelous books. And why these people . . . there wasn't anything in his background that I could see.

But I can understand how this could happen, because I had first applied for service in army intelligence, and one of the questions the fellow asked me was, "What do you read?" And I said, "Well, I read the New Republic and I read The New Yorker." Well, of course the New Republic was considered a little bit

⁸ John Hershey, A Bell for Adano (New York: A.A. Knopf, 1944).

avant-garde in those days, and that dinged me for army intelligence. This made me so mad that then I applied for naval intelligence, and I was accepted, although I told them exactly the same thing I told the army.

Later I got to know the guy who investigated me, and I said, "With all those subversive tendencies that I had, how in the world could you pass me?" "Well," he said, "I knew that was a bunch of junk. You were just as square as a square piece of wood. Here you are, a Wall Street lawyer. You had never done anything even remotely out of place." Anyway, that's the way it went.

So, I stayed around New York, as I said, for about a year and a half, and then I finally went out to sea. And the intelligence people never caught up with me until about three months before the end of the war, fortunately.

Hicke: Isn't there an exciting story about the landing at Normandy [France]?

Austin: Well, at Normandy it was very important to find where the guns the Germans had sited on these invasion beaches were. And our destroyer was old and considered expendable.

Hicke: What was the name of it?

Austin: The U.S.S. Baldwin 626. And somebody made the decision to send our division--four destroyers--to Normandy the night before the invasion while it was still daylight. We were to steam up and down the Coast hoping that the Germans would shoot at us and we would find out where the gun locations were.

We got there about 8:30 at night, and that's British summertime so it was broad daylight. We steamed up and down and of course the Germans were much too smart. They were going to wait for the real thing.

That's one of the things that always made me wonder: Why they didn't think this thing was for real, because all through that night and the next morning thousands of these ships were showing up and airplanes going by overhead, and if they thought that was a diversion, I don't know what they thought a real invasion was going to be like. But anyway, they were fooled, and only a few of the people guessed that that's where the main invasion was going to be. The other people, [Adolf] Hitler included, all thought it would be up in the Calais [France] area.

I guess the most exciting thing that happened to us was that we got a little too close to shore. We got stuck on a sand bar, and we were trying to back off this sand bar. We were about 1,000 yards off the beach and this German 88 started firing at us. In artillery, you fire over this distance to the target and then under. You go long, then short, and then you take the distance between the two and that's the target. And this 88 went over, then under.

Of course, with a ship with as thin a skin as a destroyer and with as much ammunition out in the open, because we were getting ready to shoot, well, one shell would blow the whole ship up. So theoretically the next shell should have put us up in the air. But for some reason the gun turned to some other target; so we never got the third shot. And that's why I'm here today. So that's just another lucky incident.

Hicke: You were aware of this when you were standing on this ship?

Austin: Oh sure.

Hicke: Waiting for the gunner . . .

Austin: Well, everybody was waiting for it. You couldn't do much else--there wasn't any place to hide. So anyway, so that was my naval career. I did my duty, but it was undistinguished in terms of any particular episode or anything like that.

Hicke: They didn't make any particular use of your skills as a lawyer?

Austin: It was very interesting. The two captains I served under felt very strongly they didn't want me in on the court-martials because they felt it was unfair to the other side, since I was the only lawyer. Well, I didn't have any more trial experience than any of them had. I mean, it wouldn't have been unfair at all. But nevertheless, they wouldn't let me appear either for the defendant or for the ship.

The only legal thing I did was the navy had a printed form of a will, and going over to Normandy I think I wrote about 170 wills for these various officers and seamen. And of course that in itself was kind of . . . I don't know what comfort it would give you, because if they were killed probably the ship would go down and so would the wills. But anyway, I wrote up quite a few wills that afternoon going over to Normandy.

Hicke: Must have been a little depressing, too.

Austin: Well, you know. And then when I wasn't on watch I spent the rest of the time just reading a detective story on the way over to pass the time. Anyway, that's my naval career in a nutshell. I did my duty but I don't have any outstanding stories to tell.

Hicke: Okay, well, maybe this is a good place to stop.

IV TRANSITION TO MORRISON & FOERSTER

[Interview 2: April 20, 1990]##

Moving to California, 1946

Hicke: You said you had a plan of attack for 1946.

Austin: Well I was going to describe how I got to California, what I saw first when I came to California, who was here in California . . .

Hicke: And why you came to California.

Austin: Okay, and why I came to California. I got out of the navy in October of 1945 and my second child, second daughter, was born at the end of November of 1945. Until we could feel safe in leaving we had to stick around New York, and it wasn't until January of 1946 that my deceased wife Joe--short for Josephine--and I decided to take the trip that we had been discussing off and on for the four years that I was in the navy. That is to say, interviewing in Denver, San Francisco, Portland, and possibly Seattle. That trip took place in January. We first went to Denver, which we found a very interesting and exciting city. However, my sister was then involved at the University of Denver, and we got the distinct feeling that there was a strong cleavage and cliquiness between the country club set and the university set. Since we had good friends in both, we just weren't all that interested in getting into that dichotomy. Denver had initially been our first choice, but having seen that . . . We held the hole cards: I got a job offer, but I didn't tell them yea or nay at that point.

And then we went to San Francisco. Joe had never been to San Francisco. I'd been there during the war; back in 1944 I'd passed through San Francisco. Oh, was it fun and attractive, and I interviewed at Morrison & Foerster. The first person that interviewed me was Mr. Clark, who made a tremendous impression. He was a very imposing person, a very interesting man to talk to.

Hicke: Can you give me some examples? What was it that impressed you?

Austin: His presence. You met the man and you had the feeling you were meeting somebody very important. Not that he was pompous, he kind of breathed it. And as I say I was very much taken with him. Then he took me in to see the managing partner, Judge Holloway, and I took a great liking to him also.

Hicke: And why was that?

Austin: Well, because Judge and I worked together for over twenty-five years, and we just clicked it off.

Hicke: Oh. But I meant why did you take a liking to him at that first meeting?

Austin: Well, he was very warm and unpretentious, and he was talking about the practice of law the way I hoped to practice it. That night at the hotel he called up to offer me a job, and I thanked him and said we'd think about it and let him know when we got back to New York. He understood that, and he said fine.

The next day we went up to Portland, Oregon, where we had good friends who showed us around, and I visited with the Kerner, Young & Swett firm which was very much like Morrison & Foerster, at least in those days. Whether the Schwabe firm today is anything like Morrison I rather doubt, but at that time they were both fifteen-to-twenty-men law firms, one of the better firms in their respective cities, had a similar practice, corporate practice, very little to choose between the practices.

Having received job offers in Denver, San Francisco, and Portland, we got on a train and went back home.

Hicke: You didn't bother with Seattle?

Austin: We didn't bother with Seattle. I might explain in passing that law firms were so desperate for lawyers at that time that I think almost anybody could have walked in any law firm and gotten a job. Now that may be a slight exaggeration, but not too much, because obviously there hadn't been any product available for four years. So it was an ideal time for me to switch.

Hicke: Did you have letters of introduction?

Austin: Oh yes, I should have mentioned that. My old firm was very nice. They made every effort to get me back, my old boss did, but when he saw that I wasn't going to come, he then found a partner in

Milbank who would write a letter of recommendation for me to each firm I planned to visit. So naturally it was just like shooting ducks on a pond. You walk in with a very strong letter of recommendation, you've had two and a half years of experience, everybody's desperate for lawyers; it didn't take much with that kind of a send-off to land a job.

The salaries were all about the same--\$250 a month, \$3,000 a year. My old firm in New York had offered me \$6,600 a year and for a father with two children that represented quite an economic bite. But I've always believed in the long-term view and I figured, well, we could eat a little grass for a while and we'd make it okay, which we did.

Hicke: Did you interview with other firms in San Francisco?

Austin: Yes, I went to Pillsbury, Madison & Sutro, and Mr. [Eugene] Prince, who was then one of the senior partners at that firm, looked at me, looked at my record, and said "You're with a very fine firm today. Why are you wasting my time coming and talking to me about working for my firm when you already have a very splendid job with a New York firm?" Well, I gave up on him.

I went in to see Mr. Phleger (and this is my famous Brobeck/Phleger story), and I presented to Mr. Phleger my letter of introduction to Mr. Clark. I didn't have one to Mr. Phleger, but I thought he'd be interested in seeing what my old firm had said to Mr. Clark. Well, he took one look at the letter and saw it was addressed to Clark and he said, "Young man, this interview is terminated." And he whisked me right out the front door. It was years before I figured that one out. But that's the way the old boys used to work in the good old days.

Anyway, all the way back on the train we debated Portland against San Francisco, since I was considering the firms on an equal basis, we were doing this solely on where we wanted to live. And we went back and forth, back and forth. And just as we were starting to roll into the Grand Central Station, I said to Joe, "You take a piece of paper and write where you want to go, and I'll take a piece of paper and write where I want to go."

My thought process went as follows: "I don't really care between Portland and San Francisco. I'm sure I'd enjoy either one. But Joe's very musical and maybe there's a little more music in San Francisco, so I'll pick San Francisco." And her thought process went: "I don't really care whether we live in Portland or San Francisco, but I think John might have better opportunities in San Francisco; so I'm going to vote for San Francisco." So that's

how we happened to come here. And I called Judge Holloway and told him, and I was hired.

Hicke: Were they looking for some specific expertise?

Austin: I don't think so. I think they were just looking for people. They had so much business for the number of lawyers they had, and I had had some rather rigorous corporate training in Milbank, Tweed, which of course none of their associates had ever had. So it was a help to them to have another person who understood these corporate deals that we were getting involved in.

Hicke: What kinds of things did they ask you?

Austin: You mean in the interview?

Hicke: Yes.

Austin: It's funny, I have very little recollection of those interviews. They were very general. I can remember Mr. Clark saying . . . I told him that I'd done a lot of bond indenture work for one Milbank partner, involving very complicated agreements. And I can remember Mr. Clark saying, "Well, that ought to be good experience for almost anything you do." And I think he was right, but that's the only comment I can remember that either Mr. Clark or Judge had. Those fellows were still very interested in the war, and they wanted to talk a lot about the war. I'd been in it for four years, and so I didn't go in for that too much.

Partners and Associates in 1946

Austin: So then I arranged to come back, and I arrived at Morrison & Foerster on March 16, 1946. At that time the partnership consisted of Messrs. Foerster, Shuman, Clark, Cobb, de Fremery, Holloway, Fitzgerald, Clinton, Hutchens, and Kries. Before World War II, apparently in 1941, the firm had divided the partnership into proprietary and nonproprietary partners, and this was, as I've said earlier, eventually eliminated. But at that time Messrs. Hohfeld, Foerster, Shuman, Clark, Cobb, de Fremery and Holloway were the proprietary partners, and the nonproprietary partners were Fitzgerald, Clinton, Kries, and Hutchens.

Hicke: Hohfeld was of counsel at that time, wasn't he?

Austin: He became of counsel on January 1, 1946.

Hicke: Incidentally, I ran into a list of capital assets from the early '40s, and Hohfeld had something like three times as much capital invested as the others, so it's a good indication that in fact he did, as you thought, finance the firm.

Austin: Well, sure, he was bankrolling the firm. The associates I am told in 1943 were Kries, Hutchens, Troy, McCrystle, Gibson, Glen, Heneys and Dunbeck.

By January 1, 1946 Kries and Hutchens had become partners, so that when I came with the firm, there were the ten partners that we've already discussed, and the associates consisted of . . . let's see if we've got that listed here. Well, I can do it from memory. It would be Boyce Gross, Al Gibson, Jack McCrystle, Bart Phelps, George Clinton, Riki Musto, myself, and Jim Durney. I think Jim came with the firm in January and I came in March. So we were eighteen: In other words, there were ten partners and eight associates.

First Impressions

Austin: Now, in order to get my first impressions of Morrison & Foerster, you've got to realize that they were in the old Crocker Building, which was a flatiron building. A flatiron building is a building which has a very sharp nose facing onto one street, and then its sides face up two other streets. In the case of the Crocker Building, its two sides were on Market Street and Post Street, and its nose faced into Montgomery Street.

Hicke: That's because of the peculiarity of Market Street running slanted across the . . .

Austin: Well, that's true, but on the other hand, the new Crocker Building, now called the McKesson Building, doesn't have that sharp nose. It has a plaza and it's a square building.

Hicke: I was wondering what it's like on the inside.

Austin: That's right. Well, it just gets narrower and narrower and finally there's one office in what we called the gore, the gore being the nose.

Hicke: And that office is sort of triangle-shaped?

Austin: No, it was curved, just the way that building was curved.

Hicke: It's curved on one side? And it's got that one window? [Looking at picture]

Austin: That's right. That was the gore office, and as I remember it I think Jack McCrystle had that office. He was one of the probate lawyers.

Hicke: Did you have a whole floor?

Austin: They had the whole eleventh floor, and they had part of the fifth floor for a library. And that was the Morrison office. The quarters were pretty spare. It was a linoleum type of material in the reception area, and there was a very nice, excitable, young Irish-American girl named Miss Murphy who was the receptionist, who sat at that desk and greeted people and that sort of thing.

Hicke: She was excitable?

Austin: She was pretty excitable, yes.

Hicke: Like if two phones rang at one time?

Austin: Yes. The linoleum on the floor was not very prepossessing. I mean, if you got off an elevator and walked into the reception room at Morrison & Foerster you'd wonder if these fellows were able to pay the rent.

But be that as it may, the senior partners had very large offices, and they conducted all their meetings and conferences in those offices. In order to get into their offices, if you were an associate, you had to go through the secretary's office, which was pretty nearly as large as my office is today, and only the senior partners would walk directly from the hall into another senior partner's office. Everybody else had to go through. We had one time note clerk, Mrs. O'Toole; she did all the time notes. We had one person, Miss Putnam, for records; we had one switchboard operator, Millie Costello and docket clerk, Mrs. Klopeck.

And we had a callow youth named Les who kept the financial books. We never had a certified audit, but every year at the end of the year, Judge Holloway would bring in some outside accountant and he'd kind of look things over and make sure that from a tax point of view the firm had gotten everything straight.

Hicke: Where were the files kept?

Austin: Initially they were kept on the eleventh floor. Later on they were kept in the space below.

Hicke: All in one spot, or did each partner have his own files?

Austin: Well, they kept their own files in part, and then there were general files in part. Any partner who was trying a case kept his own trial calendar. There was no master calendar, as I remember it.

When I arrived in March of '46 Mr. Clark's first love was litigation. Actually, he wasn't a bad business lawyer, but it bored him. He preferred the drama of the courtroom and that sort of thing. Shuman was the bank lawyer, Foerster was the corporate man, and we'll get into the clients in a minute. Holloway was also a corporate person. So we had one bank fellow, two corporates, a litigator, Clinton did the labor work, Fitzgerald did the probate work, and at that time Kries was pretty heavily involved in the Danish Consulate and naturalization and immigration problems arising out of that. More about that later, because I got very heavily involved in that. And Hutchens did small things. I don't remember that he had any major client or that he had any major skill. He just kind of filled in when they needed somebody. We all felt Hutchens never reached his full potential (he was Harvard Law Review) because his father-in-law Mr. Shuman bullied him.

Hicke: Here I go interrupting again, but I have another question before we get too far along. It seems that people were a little more specialized than maybe was the general rule then.

Austin: When I group them that way I may be in a sense anticipating, because every single one of those people whom I've described as business lawyers had tried cases, and Mr. Clark was a litigator and had an extensive business practice. But there was no question about it that Fitzgerald and McCrystle would spend the majority of the time on probate matters--writing wills, probating wills, that sort of thing. There's no question that Hart Clinton spent virtually all of his time on labor work. And the other people, at least when I got there in '46--I can remember Judge Holloway tried one case. But virtually from the time I got there Foerster and Holloway were busy with business practice matters. They didn't write wills or anything of that kind.

Hicke: So if you had a client that came in for a corporate matter and also wanted a will written for something, that would be passed over to the person who wrote wills?

Austin: Probably. Well, it would depend. For instance, in my own case, after I got going, for many years I wrote wills and trust agreements and things like that. I happen to like that practice.

I wouldn't want to be a probate lawyer, I didn't care about the probate side, but I liked the estate-planning and will-drafting aspects of it. So for clients who came in to see me, I did a lot of that sort of work. But by and large, the probate work then and certainly now always is done by the people in the probate and estate planning practice.

Hicke: Who would decide how the work was divided up?

Austin: There wasn't a lot of discussion about firm clients. They were sort of the partners' clients.

Hicke: That's what I was getting at.

Clients

Austin: Let's take the five major clients. They were the Spreckels interests, the bank and Crocker interests. Food Machinery, which was a big manufacturing company down in San Jose, Foster & Kleiser and Honolulu Oil.

The Crocker work, Mr. Shuman was responsible for; the Foster & Kleiser work and Food Machinery work Mr. Foerster was responsible for. Honolulu Oil was really Mr. Clark's, but Judge Holloway did all the work. Mr. Clark didn't do any of the work after I came. And Mr. Clark and Mr. Foerster shared the responsibility on the Spreckels work with Judge being heavily involved as well. But there was much more of a feeling . . . not that they weren't harmonious, it was just that it was "my client," that sort of thing. It was only as the firm got bigger that the institutionalization of the client occurred. And that was sort of a gradual process.

Hicke: So then if the Crocker estate, for instance, needed a case litigated, maybe Mr. Clark would take that on?

Austin: Well, he might have. If it was a very intricate one he would probably be called on to do it. But if it were just a sort of the run-of-the-mill thing, whoever happened to be working on it would do it. As I say, they all had tried cases, as distinguished from so many of us.

Hicke: The person who had primary responsibility for the client then would decide . . .

Austin: He decided what he wanted to go where, that's right. Somewhere in my files, and I'll try and get it for you before we get through with this thing, I must have the gross income of the firm the year I became a partner, and I'm not even going to guess now, but I would have said it was in the lower thousands.

And I remember that the year before I made partner, I was making \$750 a month, which was \$9,000. And I think that the first year that I was a partner I made \$13,000. And I had a 5 percent interest. So if \$13,000 is 5 percent, I ought to be able to figure that one out. [Does some calculations]

Hicke: The firm income would have been around \$260,000.

Austin: Right. Which shows you that we were dealing in small numbers. In fact, even later on, when Mr. Clark had a national reputation--and I'm talking now when he was right at his peak in the late '40s and the early '50s--he was making about \$50,000. It kind of staggers your mind to think that a starting associate in this firm today . . . well, I don't know what it is, but it's over \$60,000. So the value of money and the firm's profitability have certainly changed.

Well, anyway, back to where we were.

Hicke: What was the year you made partner?

Austin: I made partner in 1951 on October 1st.

Hicke: Okay. Back to '46.

Associates

Austin: Let's go back to '46 and look at these associates a little bit. Boyce Gross was working on an antitrust case for Mr. Foerster. He had been an associate in the firm almost as long as Kries, and he was not made a partner on January 1st when Kries was. Now I don't know the reasons for that. I wasn't a party to it. So I have no comment on that. But anyway, he was working with Mr. Foerster on a rather large antitrust case.

Hicke: Do you know what that case was?

Austin: It involved Food Machinery. Al Gibson did just about everything; he was about as general a practitioner as you could find. He also

owned a rice ranch up near Colusa; so his interest in the law was shared with his interest in his rice ranch, or whatever you call a rice operation.

Okay, Jack McCrystle we've talked about. Bart Phelps, well, you're going to get his interview, and he can tell you what he did. George Clinton just did everything. George was one of the great general practitioners. You could give George anything and he could do it. And the fact that it took him so long to make partner, in my judgment, was because people never realized his tremendous resources and were always focusing on the fact that he was the younger brother of a partner and that there was a lot of nepotism going on. Well, in his case he was hurt by the fact that his brother was a partner.

Riki Musto worked with Mr. de Fremery. You might say that he was the first of the pure specialists. Tax had become somewhat of a specialty.

Hicke: Jim Durney?

Austin: Durney and I did pretty much the same thing. We worked for Mr. Foerster and Judge Holloway. We worked for Shuman on the bank stuff.

You asked about the staff. [Looking at the outline] The staff was minute. There was Mrs. Lewis. She ran the stenographic pool. There must have been five or six people in that.

Hicke: All sitting together in one room?

Austin: All in one room, and she determined when your work got done and who did it. There was no such thing as having a secretary. The most important people for a young associate to know in those days were the senior partner's secretaries. If you could convince them that you were a person of merit, why you could make your way in the world. But if they ever got down on you, you could forget it as far as getting ahead in the firm.

Mrs. Lewis would keep a pretty sharp eye on things. Mrs. Foster was Mr. Clark's secretary, Miss Wills was Mr. Shuman's secretary. Mrs. Johnson was a nice young lady; she was Foerster's secretary. But as for the rest of them, you kind of went there with your hand on your forelock to even get in to see a senior partner. There was no such thing as phoning them directly. You went through the secretary. The secretary fielded all the calls.

Hicke: So you would give your work to Mrs. Lewis and she would see that it got done?

Austin: Yes, she'd give you a stenographer to dictate to, or if you had written it out, she'd take care of it at her speed, not your speed. These people were very status conscious and very dictatorial, actually. This idea that it was a man's world is a bunch of poppycock. I mean, a young associate in Morrison in the middle '40s had better appreciate that there were some pretty powerful women that had a lot to do with what happened to him.

Hicke: It must have made it a little tough on the young associates.

Austin: Well, yes, sure. That's the difference between then and now. Nobody sat around trying to figure out what would make the associates happy. I mean, that wasn't the purpose of this exercise. The purpose of this exercise was to get the client's work done, keep the partners happy. It wasn't that they were fiendish or anything, that's the way it was.

I had very warm, personal relationships with Mr. Clark, Mr. Foerster, Mr. Shuman, and Mr. Holloway. They were the senior partners. Mr. Shuman lived in Berkeley, and he and Mrs. Shuman would invite us over for dinner. So I'm not trying to say that socially they weren't friendly, but in the office it was a more structured affair. Rank had more place.

Around here, Carl Leonard has his spot by virtue of the respect and admiration that people have for the job he's doing. It's not because he's the chairman. I guess 90 percent of the people call him Carl, feel perfectly free to go into his office any damn time they feel like it, and it's very different.

Hicke: Did the associates band together and have some social activities?

Austin: We used to, a good many of us. You know, \$3,000 didn't go very far, and we would bring our lunches to work. At the beginning we used to eat our lunches in the library. Mr. Shuman came down one day, and he didn't like the idea that we were eating our lunches in the library. So we had to quit doing that.

Then we started on clear days going up to Union Square and eating our lunches up there. Union Square was a lot cleaner and inhabited by a lot more decent people in those days than it is now. You've got a lot of bums up there now.

Hicke: How about the pigeons?

Austin: The pigeons were there; they've always been there. If it was raining, there was a little conference room off the library, and we sometimes would sneak in there and eat our lunch if we were brown bagging it, as we used to call it. Otherwise we'd go out to one of these coffee shops and have lunch for thirty-five or forty cents--that sort of thing.

Hicke: Did you have any regular place?

Austin: Mannings Coffee Shop was right up the street on Market Street. That was a favorite hangout. There was another restaurant on Post Street right beyond the Mechanics Institute.

Hicke: Would that have been the Fly Trap?

Austin: No, the Fly Trap was where the Wells Fargo Bank Building is now. We used to eat at the Fly Trap, and I can't think of the name of this place, but somebody will when you talk to them. In any event, that was sort of the way we went. We associates generally ate lunch together. In the very early days I didn't know anybody in San Francisco; so there wasn't anybody else for me to eat lunch with.

Office Technology

Austin: [Looking at outline] I told you about the staff, but you asked about the office technology. When I got there, there was something coming in that made a real breakthrough in making multiple copies, and it was called hectograph. Hectograph was a round disk, and you put your original in, and these purple copies would come out.

Now there was one terrible thing that we found out about hectograph. We actually printed some original documents in hectograph. To our horror, we found that hectograph fades, and we had to quit using hectograph for the originals, because the damn thing would fade away unless you immediately put it in a file and never opened the file. In other words, any light would cause fading. That was our first real duplicating machine.

Now prior to that, all the typing was done with carbon paper--ten copies. One little mistake and you'd have to do the page over; it was a laborious thing. The fact of the matter is that those stenographers, just because they had to, were very, very accurate people on the whole, and quite fast. Considering

what they had to surmount--that is to say, putting the carbon paper in to get ten copies of something--it was amazing how fast and how accurately they could get the work out. It would just astound anybody today who just uses a Xerox machine and doesn't think anything about it.

Office technology. I've talked about the telephone system. The telephone system consisted of Millie. She had a memory like an elephant. Millie was there long after '46. You could call her up and say, "Millie, do you remember one time four or five years ago I called a fellow in Cedar Rapids, Iowa? I can't think of his name." She'd say, "Oh I remember him, Mr. Austin, let me think about it." About five minutes later she'd come back: it was Mr. So and So. That's right. She'd look his number up and away we'd go.

As far as the telephone system was concerned, we had a switchboard and we had an operator, and she seemed to be able to handle all the incoming and outgoing calls because everything went through her switchboard.

Hicke: Were there telephones in all the offices?

Austin: Yes. Well, if there were eighteen lawyers and at least seventeen secretaries and stenographers--one way or another there were probably pretty close to fifty jacks. She was able to handle a switchboard with fifty jacks on it without any trouble at all.

Hicke: What about inter-office communication?

Austin: Same thing; you could pick your phone up, but as I remember it, you got her. You said, "I want to speak to Mr. Holloway." Of course, sooner or later we got the dial telephones in and everything changed, but that's the way it started.

Billing Procedures

Austin: The next thing to discuss if you're talking about technology is the billing procedure. We kept time notes, but these time notes were nothing like as accurate as the time notes that people keep today, the reason being that they were only casually examined for the purposes of billing. Most of the billing was done on what we now call a value basis. The partner would look at the job and say, "Well, I guess that registration statement was worth \$10,000." That's what he'd charge.

We used to have a theory that these time notes would tell us what our costs were. But of course that was absolute nonsense; they didn't anymore tell us what our cost was than a man in the moon. So we'd say, "We will multiply that cost figure by two and a half or three times and that ought to give us a fairly accurate figure.

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Hicke: You were just talking about the billing.

Austin: Yes well, it was value billing. There is some billing today that is done on that basis. Where the value doesn't bear any particular relationship to time. For these very complicated corporate takeover situations, lawyers don't bill on a time basis.

Anyway, back to our billing. Then somebody would draft a bill "for services rendered in full with respect to" and there might be a couple of paragraphs as to what we'd done, but there wouldn't be any reference to the time notes or the hours or anything of that kind.

Hicke: Would it say how many people worked on it?

Austin: No. Just the name of the firm.

Hicke: Would a case go on for two or three years and then be billed at the end of it?

Austin: That's a very good question. Yes, there were many . . . You see in those days we had corporate clients. That is to say, we had companies, as I told you earlier, for whom we did all the legal work. All of it. Or maybe they had one lawyer in the office who did some of the grunt work, but we did all the other work. And some of our partners had a very casual attitude about billing. Sometimes they'd bill annually.

I'd never heard of us billing any more frequently than quarterly, unless we were on a transaction, and then we billed at the end of the transaction. I mean if we did a stock issue, when the thing closed, we'd send them a bill. But if this thing went on for six or seven months, we never had an on-account billing. there was no concentration on float. In other words, you built up these receivables. For example . . . Mr. Foerster didn't like to bill, and I must say, I never cared much for it either, but they'd really have to dig him to get his bills out at the end of the year.

Hicke: How would you know how much income was going to come in within a year?

Austin: There was no such thing as budgeting. We never had any budgets; just lived hand to mouth. We didn't have any draws. When I became a partner, I was told to develop enough cash to feed my family for two months, because sometimes these distributions would be made and sometimes they wouldn't. It would just depend on whether we had any money. There was no attempt to get the money up front.

Hicke: No attempt to even it out over time? So you never knew how much you were going to make?

Austin: No, we never had budgets around here until 1965-70, somewhere in there. It was the first time we had a budget. We didn't believe that it was possible to budget. The thought that lawyers were not capable of budgeting because you never knew what business you were going to get. Now this firm is billing considerably in excess of \$100 million a year and they are able, with extreme accuracy so far, to budget expenses, budget income, and they always come in pretty damn close. In recent years they've always been a little bit high on the income side. If the budget was X, it's always been Y. But as I say, we never had that concept. You just practiced law, and when you felt like billing, why you billed. There was no business planning whatsoever, none. A very happy house and day, but . . .

Hicke: Did your income sort of flow upward in general, or did it take wild swings?

Austin: Well, it seems to me that by the end of the year, in every year, you'd pretty much have what your take was for the year. That would be assuming that the money would be coming in in January of next year.

Hicke: Did you have a designated take for the year that you were expecting?

Austin: No, you never knew. As I said, the only rule of thumb they ever gave me when I became partner was "Be sure you've got enough money to feed your family for two months." No budgeting, no nothing. No discussion of where the economic opportunities were going to be, whether they were going to go downhill; none of the business planning that goes into running a law firm today. None.

Firm Culture

Hicke: How about getting business? Was there some emphasis on that? How did they go about getting business?

Austin: Well, I think they assumed that the senior partners pretty much were going to get the business, which they did and still do, although the partners around here all get business. Even though as I indicated earlier, the partners considered client theirs. The firm had two ethics which were very strong in 1946 and remain very strong today. One is the passing down of work; getting the client to appreciate that, of course, on the most important decision the senior person will be involved, but that there are many tasks that you can call on your law firm for that could be handled by somebody else. And in the process, you're bringing somebody up. Both Mr. Foerster and Mr. Holloway were absolutely pros at this, and so was Mr. Clark for that matter.

The result was that pretty soon people would start calling you more and more and more, and the senior partner less and less and less. Well now, if the senior partner was a clutch kind of person he'd be worried about that. These people were never worried about that, and the result was that they pushed this business down. They taught us to do this and we, in turn, pushed the business down. That's the way we were trained and the way we behaved. That's the only way to run a law firm as far as I'm concerned.

Hicke: What was the other ethic? You said there were two.

Austin: Oh, the other is pro bono. You know, we make quite a bit about our pro bono activities. In those days the main legal pro bono activity was The Legal Aid Society, which I mentioned to you before. Mr. Clark and Harrison Tweed in New York of Milbank, Tweed were the two principal forces in getting legal aid really operating throughout the United States. So it comes as no surprise to find that Morrison & Foerster is in the forefront of pro bono today, because they were in the forefront of pro bono back then. These are ethics that we really inherited and retained.

Hicke: Okay, well one of the questions that I want to get at since we're on it is: can you give me some sense of how this corporate culture, if you want to call it that, is passed on?

Austin: By act. I mean, if John Austin got to work with George Keyston, got to work with the Food Machinery people, got to work with the

bank people, got to work with just too many numerous people to mention, then over a period of time those people ceased calling the seniors and came to me.

Well, that's exactly what the senior partner wanted, because if they were just hanging there wringing wet and they had a life or death decision, you can bet you life they would have called Mr. Foerster in and he would have come in. But he's off doing something else and getting clients. And that's the way it worked with me. I mean, when I got to a point where I started to bring clients into this firm, why I was passing them down to [Marshall] Small and [David] Nelson. I wasn't doing anything that my seniors hadn't done for me.

Hicke: But nobody sat you down and said, "This is the way we do it."

Austin: No, it was never discussed. Just by act. It means a lot more to have people do it than talk about it.

Hicke: Sure. No doubt about it.

Austin: So, let me think now. We're still working on structure here. You asked about the firm management.

Typewriters

Hicke: Can I go back one more time? How about the typewriters? Were you using just old Underwood typewriters?

Austin: Yes, and we finally had something called a noiseless typewriter, which was not noisy, and guys would have their secretaries in their office and they'd be typing away. It was a very dulcet tone. I mean it wasn't the bang, bang, bang. You talk to some of the people about that. I think you'll find out that I'm not mistaken on that. There was a thing called a noiseless typewriter.

Hicke: Sure. And then did electric typewriters come along?

Austin: Then finally, electric typewriters. But my recollection is they came along much later. I would have said maybe in the '60s, something like that. And then you got these IBM [International Business Machine Corporation] typewriters with memories, and then you got computers, and now you're well beyond me, because I don't have a computer station. I don't know how to work one.

Firm Management

Hicke: Okay. So now we start on firm management.

Austin: Yes, well, you know it's kind of tricky business to say how firm management worked when you weren't a part of it, because so much of it may have been done outside my presence. But I would say that the firm management went about like this. Judge Holloway was the managing partner. He was very efficient and well liked by everybody in the firm. He had no cliques. He was everybody's man, and everybody respected Judge Holloway enormously. As far as I could see, he ran the firm. Now that's not to say that he ran the clients of the firm, because each one of these partners had his own way of handling his clients, if you understand the distinction.

Hicke: So Judge Holloway would oversee the day-to-day operations?

Austin: Absolutely. And he'd be sure that people sent their bills out; he'd do all that sort of thing. He ran the administrative side of the office.

Hicke: And hiring?

Austin: Hiring. Yes. Now when they hired somebody, when they hired me for instance, who did Clark and Holloway talk to? It wouldn't surprise me if they just talked to themselves. And then said, "Roland and Frank, we just hired a fellow from New York and we're getting him pretty cheap and he's okay." Do you see what I mean?

Of course, I wasn't there on the decision-making, but that's the way I would assume the decision-making went. By and large, the Judge made the decisions and he had eminent good sense and good judgment. And I suspect when he felt he had one that needed a little more fielding then he could give it, why he'd get whoever he thought was appropriate, because when I became a partner, I can't ever remember us discussing business at a partnership meeting. It was always just a pleasant time. We met every Tuesday noon, and once in a while somebody would ask a question, but there wasn't any real attention paid to business at those partnership meetings. Judge was the managing partner and these guys were the senior partners. It's the same old group.

Hicke: Who made the partnership decisions: I mean, who decided who would become partner?

Austin: I suspect that they got together and huddled on that.

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Austin: I would suspect that if it were something material, Judge would certainly talk with Roland Foerster and Herbert Clark and maybe with Frank Shuman.

Mr. Shuman had been the managing partner, but that was before my time. I got the impression that the partners were not very happy with his administration as managing partner and that they were very happy to have Judge, who could do things so smoothly and effortlessly and with dispatch. For instance, when Mr. Shuman was managing partner, it was almost a state of offense to chew a pencil. It was that sort of thing. Whereas, Judge was no spendthrift, but he wasn't going to waste his time on that kind of nonsense.

Hicke: It makes you wonder how they decided who was going to be managing partner.

Austin: Well, I think they were glad to get rid of their brother Frank Shuman as managing partner. You know this is just pure guesswork. It's a shame that we didn't get to Judge before he died on this, and there's nobody who could really tell you, because I don't think Clinton would know any more about it than I do.

Hicke: No. He was really sort of far off to the side and not involved in daily operations.

Austin: That's right. I think like Carl Leonard today, Judge just used good judgment. When he felt he needed a second opinion on something he got it.

Hicke: Did the associates ever want a little bit more to say, or was that a much later phenomenon?

Austin: I'd say since we're now still in the '40s: I don't remember that the McCrystles, the Gibsons, the Grosses, the Phelps--I don't remember that we sat around much saying, "They ought to do it this way or do it that way." It wouldn't have done us any good, and we just didn't waste our time on that. We all I'm sure made notes so that when we got to a point where we had something to say about how the firm was run, why we'd damn well take care it was done that way, rather than the way it was being done.

Hicke: So it was a learning process?

Austin: Well, by observation you learn a great many things, sure.

[Looking at outline] Social activities. As I told you, we always worked through Saturday noon, and Mr. Clark or Mr. Foerster, one or the other of them, would very often take us out to lunch. When the firm was smaller, it was more intimate and it was great fun. Mr. Clark was just a super conversationalist, and it was a real treat just to sit there and listen to him talk. You know these guys had a lot going for them.

Hicke: What would he talk about?

Austin: Anything. He'd talk about the New Deal, he'd talk about the war, he'd talk about economic conditions in the United States after the war, he'd predict what was going to happen, that sort of thing. The man had a big, big mind, big vision. He had a tremendous library, a great big house at the top of Marin Avenue in Berkeley which is now some kind of institution.

Politics

Hicke: Well, speaking of politics, did you voice your opinions among all the Republicans?

Austin: They all knew that I was a Democrat, and they were very nice about that, except for that on instance: when Harry Truman beat [Thomas E.] Dewey, Shuman asked me how many clients I thought I'd lost voting for Truman. They must have shut him up on that because he never made that crack again. They heard it, and I suspect that Foerster and Holloway just jumped all over him for that, because they wouldn't go for that kind of stuff.

They were all Republicans. Bart Phelps, as we mentioned before, was a Democrat, but Bart left I believe sometime around 1950, and he later became a distinguished judge down the Peninsula, and for all I know maybe he's still judging.

Hicke: I think he's retired. Apparently they knew you had voted for Truman.

Austin: Oh yes. They, of course, as a partnership were making contributions to the Republican Party. I forget whether it was Judge or Mr. Foerster, but it seems to me I mentioned it to them once when I became a partner, and after that in a very tactful way

they just passed the hat among the Republican partners and they didn't bother the Democratic partners.

So I've never, even when I was on the down side of the picture here, I never felt that they were threatening me because I was a registered Democrat. I was a pretty conservative one, they knew that; so I wasn't any bore from within. But on the other hand, the feelings ran pretty high, and they were pretty good Republicans and I was a pretty good Democrat. But we never let that interfere with how the practice went.

Hicke: Maybe I should get a little background here. How did it happen that you were a Democrat? I mean, were from a Democratic family?

Austin: Oh no, my father was a Vermonter. He was president of a New York bank. He was pretty conservative in his political views. One of my uncles ran the Republican Party up in St. Lawrence County in about the same way that Tammany Hall ran the Democratic Party in New York. So I come from a good, strong, Republican background.

But in college and in law school, a lot of us got the feeling that things needed correction. It just astounds me what's going on in corporate America today, the greed and all that. I don't know whether you've read this book Barbarians at the Gate.⁹

Hicke: I haven't read it, but I've read reviews of it.

Austin: Yes, well, I've been in this corporate game for fifty years, and I was sitting last night talking with the former, last independent chief executive officer of Del Monte [Corporation] who is an old friend of mine. We were talking about this book and about our mutual corporate experiences over that period of time, and we were just appalled at the greed that is presented in that book. It borders on the criminal. Why these people weren't put in jail beats me. But anyway, you're asking me about Morrison & Foerster, not about that.

Hicke: Well, I asked you why you became a Democrat, so that's pertinent.

Austin: Well, I suppose I became a Democrat because I thought Franklin Roosevelt had a lot more to offer than the people who ran against him. And I thought Harry Truman was damned good and I was for

⁹ Bryan Burroughs, Barbarians at the Gate: The Fall of RJR Nabisco (New York: Harper & Row, 1990).

him. In retrospect, I think I made a terrible mistake not to have voted for [Dwight D.] Eisenhower. I think history is going to accord him a very substantial place. There have been several books written about the "hidden hand," and there's no question that Eisenhower was just a truly outstanding guy. I'm satisfied that [Adlai] Stevenson could not have cut the mustard, but I voted for him twice. Well, we all make mistakes, you know.

Hicke: So politics was not a . . .

Austin: Not a detriment to my career. I never heard of anybody being asked, and I don't know how these thing work. I'd be interested as to what the mix of Democrats and Republicans is in this firm now.

Hicke: Well, that was going to be my next question. I think it has shifted somewhat.

Austin: Somewhat, and I feel that maybe the Republicans are getting to be an endangered species around here, and that would be very unhealthy, very unhealthy, if we get to the point where we have only one political persuasion in our community. I think, boy, that had better be rethought, but I don't think that's the case. Maybe there are more Democrats than Republicans, but there's certainly a good, strong bunch of Republicans who are big, strong people in the firm.

Hicke: Do you think it also indicates that perhaps other factors rather than whether you're a Democrat or a Republican are more significant?

Austin: Oh sure, sure. Because what do these labels mean?

San Francisco Legal Community

Austin: Well now, in the San Francisco legal community that's a very interesting topic that you've put here [refers to outline], because I think I mentioned that earlier there were so many fewer lawyers and everybody knew everybody.

There were what we used to call the Nestors of the bar.¹⁰ They were the Mr. Clarks, the Mr. Greens of McCutchen, Olney, Manon & Green, the Phlegers, the Mr. Princes, the Mr. Madisons,¹¹ Max Phelan's father. You could take about thirty or forty of those people and you have the principal players in the bar. And then you've got maybe a few thousand minor people swilling around down here. Those people ran the bar, they were the bar, and they were the outstanding people in the bar. They had a pretty monolithic point of view, social background, that sort of thing.

Of course, now it's all different. The bar is huge; very few people know each other. It's not that fraternity, that was sort of a "clubby" feeling that was certainly present when I came here. I mean, the senior partners in the major firms all knew each other. That isn't true now by any means.

Hicke: And they had social relationships, at least with each other?

Austin: Oh, absolutely. To a greater extent than now. Everything's diffused now.

Hicke: Would you say there was less competitiveness then?

Austin: Yes. Just to give you an example of some things showing you the radical change in the practice of law, nobody would have dreamed of going from one major law firm in San Francisco to another major law firm. They never heard of such a thing. And the idea that you would be after somebody else's clients . . . well, of course, we lost a couple of clients to Pillsbury, but I don't really think the initiative on that came from Pillsbury, I just think it came from the client.

You see, there's a big term now: "marketing." I went to this ABA [American Bar Association] meeting in the spring and went to the session on marketing. Back in 1940, if you talked about marketing, they wouldn't have known what in the world you were talking about. That concept just didn't exist. For instance, there was a time when the government wanted to sell its half interest in American President Lines, which it had acquired because it was a German ownership situation and during the war the government, as you know, seized all German assets in the United

¹⁰ Wise men, from Nestor, King of Pylus, oldest counselor of the Greeks besieging Troy.

¹¹ Herman Phleger of the Brobeck firm, and Eugene Prince and Francis Madison of Pillsbury, Madison & Sutro.

States. So the time came that they wanted to sell this, and it was to be sold in the form of stock, so they came out to San Francisco to look at the law firms in San Francisco and see which one they'd pick.

Well, if there were anything like that today, those guys--and by our firm too, believe me--would just be marketed to death. And the only firm that did any marketing on that was Pillsbury. They came out with some charts that showed how many underwritings they had been in and all this, which they gave to the government. I can remember Mr. Foerster--I asked him, "Well now, Mr. Foerster, the man came in from the government. What did you tell him?" And he said "I told him that we guessed we were capable of doing the job. If he wanted to find out more about us, why he could talk to some of the people around town and form his own opinion." And I said, "But did you tell him anything about any registration statement work we've done?" "No, John," he said. "No. That wouldn't have been dignified."

Hicke: That's certainly a good illustration of how things change.

Austin: He sure brought me up short. Anyway, Pillsbury got the job and we didn't.

Hicke: Oh, is that right?

Austin: Yes. Their charts were controlling.

Hicke: That must have been one of the few times, though, that anybody in those days walked around and talked to several law firms before they hired one.

Austin: I don't remember any other instance where there was sort of a competitive bidding for a job, the reason being that clients were already settled with firms and they didn't move around. They didn't cherry-pick. They didn't go here for this and there for that. So it was a very stable, uncompetitive process.

Vivian Kelhams

Austin: I'm just trying to think of anything else about the '40s that I could tell you. I guess the only other thing is the Vivian Kelhams incident. Mrs. Kelhams was a woman who, for her own good and sufficient reasons, didn't want to pay her income taxes, and

she was a very wealthy woman. I think we talked a little bit about her before.

Hicke: You may have told me that off the tape; but it's not recorded.

Austin: This is an example of Mr. Clark at his finest. Mr. Clark's concept of the practice of law was that you took cases whether they were popular or unpopular. You took cases whether you believed in the cause or didn't believe in the cause. That was a lawyer's obligation: do his best for his client.

I don't know how he ever got Mrs. Kelhams, but Mrs. Kelhams became our client and Mr. Clark did his level best to blunt the blows that the IRS [Internal Revenue Service] was trying to throw on Mrs. Kelhams because she wouldn't pay her income tax. I remember it impressed me at the time, because when I was a little boy, I remember going out to visit my grandmother and some old fellow who had known my grandfather would tell me, "Sonny, when you grow up, if you're a man with as much integrity as your grandfather and willing to take on unpopular causes, you'll be a great lawyer." And I thought, boy. You know I was about ten years old. I was old enough to understand the moral implications but not the economic ones.

Hicke: What ever happened to Mrs. Kelhams, do you know?

Austin: Well, that's the way these things go. You have an image about something and you focus on the thing that interests you. I'm sure the IRS beat the dickens out of her. I mean, I'm sure that before they were through they had so many liens on her property she couldn't move. So I'm sure she lost. It was a losing case.

Hicke: You're absolutely right. The important thing to remember about that is Mr. Clark's principle.

Austin: My sainted sister, who died last September, had views about the war, and she used to allocate a certain amount of her income tax that she wouldn't pay, and I can't remember how my brother-in-law ever solved that problem, but some way he made some deal with the IRS so everybody was happy. My sister didn't pay a portion of her tax, but somehow the IRS got the money. Don't ask me how that happened. But anyway, it was sort of like Mrs. Kelhams', except hers was a different reason. My sister's was because she was violently opposed to the war.

The Economic Climate in 1946

Hicke: One thing we really didn't get to was clients, and maybe we're going to talk about that when we get to your actual work.

Austin: I think we've alluded to them, but I think that this is as good a time as any to say "What was the client mix in 1946?"

Now it's surprising for a firm of eighteen lawyers, the amount of corporate business that Morrison & Hohfeld had. Just amazing, in proportion to our size. But I think that where we missed the boat was that we didn't grow with the corporations the way maybe some of the other firms were doing. And they were able to keep pace with the change in the relationship.

I think, as I told you, corporate practice compared with today was a relatively simple thing. We had the [Securities and Exchange Commission] '33 Act¹² laws and the '34 Act laws¹³ and the Trust Indenture Act, but once you had gotten into that business that kind of registration work wasn't very difficult.

I think before we start talking about the clients, we ought to talk about the economic climate. What you have to realize is that in the late '40s and the early '50s there was this tremendous, pent-up demand, and the economy of the United States was expanding to meet this demand, because all during the war we'd built up an industrial complex, but it was building tanks and machines and airplanes. This pent-up consumer demand was going on. People had money in their pockets.

So you had in the '40s, '50s, and early '60s tremendous capital expansion, which means that these companies had to raise money to expand their capital base. We were engaged left and right for major clients in doing the legal work necessary for them to make a public offering or a private placement to get the money, to get the capital to buy another plant or buy this or buy that. Yet at the beginning, we were doing this on a one-to-one basis:

¹² Federal Securities Act of 1933 and state statutes, called "blue sky laws," require corporations to make full disclosure of relevant information and register issues of securities with governmental agencies before they are sold publicly.

¹³ The Securities Act of 1934 established new standards of behavior and a new agency - the Securities and Exchange Commission - to enforce them.

one client, one law firm. In other words, one law firm did one business's law business.

Changing to Specialists

Austin: Then as time went on, that broke down and companies started calling on specific specialists. First, they could no longer get along with just a generalist who was a nice fellow with good common sense who could help them; they needed specialists. We did not field, for instance, for Food Machinery & Chemical Corporation a broad front of specialists the way Pillsbury was able to do. I was very upset when we lost that account. In the '40s and the '50s during this capital expansion when things got bigger and bigger and more complex, the need for teams of people that could approach discrete subjects became very, very strong.

Hicke: So I see the yeast that's working up to the 1960s.

Austin: We were sitting sort of fat, dumb, and happy, not paying attention to this problem. I say "we." How much responsibility you want to put on a young partner is something else. Certainly it's true that the senior partners who were running the business just missed the boat on that completely.

Now were they good lawyers? I've already cried to the heavens how good they were, what wonderful people they were, but they didn't understand how the practice of law was changing, and it's changing today. The difference is that the people in this firm, unlike the people in some of the firms around town, are well aware of what's going on and they're staying ahead of the problem, which we didn't do in the '40s and '50s. And that's why we had such a terrible, terrible time playing catch-up in the '60s.

Hicke: Did that happen with other clients too?

Austin: Oh, yes, sure. I suspect that if we had had a more planned approach to the clients than we had, if we had sat down and said, "Now what do they need and what are we giving them? Are we talking to them about what they need? Are we really on top and in front?" things might have gone better for us.

I think we should be criticized for sitting back and practicing law in the old-fashioned way, because it was a lot simpler and the CEO was sitting with the Roland Foerstes or the Herbert Clarks of this world everyday. So the communication was

there. But then when the many Food financings we participated in turned that company from a small, regional San Jose company into one of the Fortune 500 companies, we failed to keep stride as a law firm. It wasn't that we didn't have good lawyers; it was that we just weren't seeing the problems. We weren't seeing what was going to be needed of the law firm. We were so busy, kind of like squirrels just going around enjoying what we had.

Hicke: Things were going well?

Austin: Yes. I mean, there was no problem, there was no financial distress at that point. So when we start talking now about the client mix and everything, why you'll see that somewhere in there I've got to show you how this thing was changing.

##

Hicke: I think you're doing a good job of showing me how things were changing.

Austin: This is turning more to the practice now, my practice.

Hicke: Did we finish talking about the client mix in 1946?

Austin: Well, I've said pretty much. We had those five major clients. But it would be a great mistake to think that that was the only business the firm had. We represented a number of stock brokerage houses. We represented a number of real estate concerns.

Hicke: Local?

Austin: Local. These are all local. We represented a number of other smaller business. We represented the California Bankers Association. And we represented the San Francisco Clearing House. So we were and have always been known as a top-of-the-line banking law firm.

Hicke: It wasn't just Crocker then?

Austin: No, no. Because of the Clearing House and the Bankers Association that I'll tell you about later. No, we had a bigger reputation than just Crocker.

Firm Clients Austin Handled

Austin: As I looked at my time notes, there are a number of companies I hadn't thought about for years.

Hicke: Thanks for looking at those.

Austin: Well, that's no problem. For instance, here's Trevor & Company, real estate; Hutchinson McDonna, real estate; Mitchum Tully, underwriting, Burns Philp, an Australian company--they had some immigration problems.

Hicke: How did they come to you?

Austin: Damned if I know, but they were good clients. We never followed through with them, so they aren't clients today. Catherine Berio, divorce matter; Veterans Cab Company. We started this with Fitzgerald; I don't know how he got it, but these veterans came to him to form a cab company, and he turned it over to me and so I got them incorporated and we got them their licenses and got them going. Cutter Laboratories was a big client. Conrad Bruce, stockbrokers. These are just the things I worked on in '48 and '49.

Danish Consulate; W.H. Hannon, miscellaneous corporate; Crocker Estate Company, real estate; Teagarden, antitrust case; O.M. Scott & Sons--I haven't the faintest idea who they are. Corporate counseling: Best Fertilizer Co.--apparently I incorporated them. Spreckel's Sugar, corporate matters. Fred Zann--he got into a steel business. Santa Cruz Portland Cement Company. Well, there's no point, I guess, in reading all these names. It's just Moore & Roberts; Hilo Sugar; Hakalau Plantation, you know just a ton.

Hicke: Yes. That's a terrific illustration of the wide variety of clients that you had.

Austin: Yes.

Hicke: Do any of those stand out? Like, for instance, the Danish Consulate? What were you doing there?

Austin: Bud Kries was the partner in charge on the Danish Consulate, and they had some fascinating problems. I really enjoyed working on them. You see, there were laws saying that you could lose your American citizenship by pledging allegiance to a foreign power.

Now this can get very technical and complicated, so I'm going to try and keep it simple.

Let's say we've got a person of Germanic descent who spent most of the war in Switzerland. She goes to Munich. General [George S.] Patton encouraged all these people to vote in German municipal elections. Well, in voting in a German municipal election, she lost her American citizenship. Therefore, her assets could be confiscated. What we had to do was to point out that in a sense this lady was misled. This American general was encouraging her to vote in this municipal election because they were trying to get democracy going, and she didn't have the faintest ideal of all the complications and consequences. It was cases like that that were pretty interesting. We finally established her basic Swiss citizenship and that the assets that the alien property custodian had confiscated were hers.

Now if you ask me why did these things come through the Danish Consulate, well, don't ask me, because I can't answer that. Never could. It always used to mystify me, but we got all these cases out of the Danish Consulate. To me that was one of the most interesting clients we had. For a while there, I really thought I knew something about the nationality and immigration laws.

Hicke: So you straightened at least that one out for her.

Austin: Oh yes. We straightened a good many people out.

Hicke: Did anybody straighten General Patton out?

Austin: No, as I recall General Patton was killed in an automobile accident. You know, just as an aside, though, on General Patton, his point of view was one which maybe was being pressed too early after the war, but of course if you look at the people who ran Germany in the '40s and the '50s and the '60s, a good many of them may not have been in the SS [Schutz Staffel, a German paramilitary organization], but they'd all voted for the Nazi party, they had all been members of the Nazi party. So separating the sheep from the goats was kind of a tough thing.

And all that General Patton was trying to say was--and I'm not an apologist for him because he's not my kind of person--that in order to get Germany going, you had to use some of the people that had administrative experience in the past. Instead of sitting around and nickel and diming as to whether somebody had a Nazi past or not, it was more important if that person had the administrative expertise that was needed to get Germany going again. If so, they were going to use them. That was his theory.

So he spent less time on ideological problems and that, of course, upset a lot of people. And he probably went too far the other way.

In any event, we really don't have any measure of his administrative capabilities because he was killed in that automobile accident. Eisenhower had decided he wasn't the guy to do this job and he took him out. So it was just a clip in history. Okay, we're back on clients, aren't we?

Hicke: Yes. The Danish Consulate. We there anything else in that area that comes back to you?

Austin: Well, I remember a series of these elderly women who, for one reason or another, had had property in the United States who, when we finally got the thing straightened out, were not subject to the alien property custodian sequestration orders, but it took a lot of time and a lot of patience digging around to get these things straight. But it was very interesting work. I enjoyed it.

Hicke: Who paid for it? The people themselves or the Danish Consulate?

Austin: You know, you're asking a good question. I'm damned if I know. I haven't the faintest idea who Bud billed.

Hicke: If anyone.

Austin: Well, I'm sure he billed somebody, and he must have billed the Danish Consulate. But where did they get the money? I don't know. It's an interesting question.

Hicke: There must be some record somewhere, don't you think?

Austin: I don't know. I suppose you could go back and dig in our records and see who paid the bill, but that might be quite a job.

Hicke: Yes. It's probably not worth that.

Austin: No, I don't think so. You started to ask me about my first work. Let's forget about 1946, because I don't have my time notes on that, so it's faulty memory. But in 1947-'48, for example, I worked on the Hotel Senator reorganization. That's a hotel in Sacramento that had gone broke in the Depression.

Hicke: That's a well-known hotel. It's right across from the Capitol and a place where lots of legislators used to stay.

Austin: I'm sure they do. And it was a question of recapitalizing and putting it back on its feet and getting it going.

At the same time that I was doing that, Mr. Clark had developed a relationship with a man named Marsman, who became one of the great corporation builders in the Philippines. So Mr. Clark had me looking at forming California subsidiaries, getting this company listed on the San Francisco Stock Exchange, and generally setting up operating agreements regarding the mining interests in the Philippines, keeping an eye on Philippine legislation so it would be friendly to corporate expansion. I was working on miscellaneous real estate matters for . . .

Hicke: Wait a minute. Before we go past the Philippines, that's very fascinating, in my mind. How did this person come to Mr. Clark, do you know?

Austin: No.

Hicke: And what was the name of his company?

Austin: They were the Marsman Companies.

Hicke: And they were in mining?

Austin: Yes. He was in a lot of different things in the Philippines, but mining was one of his principal things.

Hicke: But the company was headquartered in San Francisco?

Austin: No, it was headquartered in Manila.

Hicke: So practically everything you dealt with was in the Philippines?

Austin: A great deal of it was, yes. I had a book on Philippine law and the Philippine law is very much like Delaware law. And of course, the corporate lawyer's Bible is Delaware. So it was easy to work out the corporate problems.

Hicke: What about taxes? Where did they pay taxes?

Austin: Mr. de Fremery took care of the taxes. I was just doing the corporate work. At the same time, I was doing OPA. Do you know what the OPA is?

Hicke: Office of Price Administration?

Austin: Yes. And we were still under price control, as you will recall, right after the war. I did a fair amount of OPA work for Trevor & Company, which is a real estate firm.

Hicke: What would be the nature of that?

Austin: I knew you'd ask me that. I suspect that it was under the OPA framework. You were always trying to raise salaries or prices, and you had these prohibitions against raising salaries or prices. You were always trying to figure out ways to do it legally and stay within the rules. That's probably what this was all about.

Hicke: And you also had to stay at the highest possible level in case they established a new base.

Austin: That's right. It was a funny business. I did real estate work for Hutchinson McDonna. I used to go to the Crocker Bank every morning at 8:00 and I'd go to Doc Creeley at the Note Desk to see if he had any problems. I never bothered Mr. Crocker, but then I'd go to the officers' platform and just go down the platform seeing if anybody had any problems.

Hicke: Really?

Austin: Yes. Every morning. And then I'd go back and report to Mr. Shuman if they were serious, and if I could handle them, I did it myself.

Hicke: So they'd just watch for you to come if they had something, and nab you?

Austin: That's right. There were only about six or seven of them. It was a very simple operation running a bank. And I drafted loan agreements and lease agreements and all the things that go with banking.

From Mr. Clark, I got into that Embassy Theater case, which was a situation in which the Embassy Theater was claiming that the distributors were discriminating against them vis-a-vis other motion picture exhibitors.¹⁴ And the way they do this is there's a system where somebody gets a first run movie, and then it will be so many days after they get the first run that the next

¹⁴ McLean, et al. v. Paramount, et. al., 1958-60.

theater gets the run. Well, there's a lot of collusion in there, and that's what that was all about.

Hicke: And Mr. Clark was trying the case?

Austin: He was proposing to try it, but we'll get to that later. Bob Raven ultimately tried the case.

I worked with Judge Holloway representing Mitchum Tully as underwriters. And this is the typical capital financing I was talking about. This is a little company down in San Jose called O'Brien's Candy, and they made very good candy. Everybody like it. They were just running out of plant capacity; so we did a first offering.

Hicke: It was a family-held company?

Austin: Yes. It was a family-held company. We sold their stock. We had to register it with the SEC. They'd never done anything like this. We did the whole thing. And as the lowest man on the totem pole, I did most of it, and it was reviewed by Judge Holloway.

Hicke: And how did it sell?

Austin: Fantastically. People bought it like hot cakes.

Hicke: Did you buy any?

Austin: No.

Hicke: What was the policy at that time?

Austin: No prohibition. I didn't have the money at that time to buy stock. Later on I bought stock in clients, before we adopted a different rule. There are some people around here that say that I pulled the ladder up on them, because we had a client called Memorex. They offered units, and with another friend of mine who is now a federal district court judge, we formed a partnership and we bought \$15,000 worth of this stock. I'm not going to tell you what that stock finally sold for, but it was over a million so it was a rather successful venture. That's the kind of thing you just don't do now with clients.

Then, [looking at notes] I can't remember who Ida Prince was, but it was a probate matter that I worked on. Catherine Berio was a divorce matter that I worked on. I did the start-up on Veterans Cab. This is giving you a mix for 1947/48, showing you the variety of things a young lawyer would be working on.

Hicke: Let me ask about divorce cases. Were there many?

Austin: No. The firm didn't think we should be involved in divorce. This was a personal friend that I helped out. Veterans Cab, I've already talked about that. Cutter Laboratories.

Hicke: Yes. What did you do for them?

Austin: They must have made somewhere in the neighborhood of, I don't want to exaggerate, but twenty or thirty acquisitions of other companies. And Judge Holloway was the point person. I worked on many of those acquisitions. Marshall worked on some. I guess maybe Dave Nelson did later on. But there were just a whole bunch of them.

I started doing a lot of work for California Bankers Association, writing legal opinions on banking issues that they would then distribute all over the state of California to teach these bankers what the law was.

Hicke: I ran across a couple of cases where you filed an amicus curiae brief for them. And they were a client for some period of time?

Austin: Oh, yes for a long time. Until they finally went in-house. Now I think we just do occasional things for them. They were one of Mr. Morrison's clients. They paid us a retainer in some ridiculous amount--I think it was \$250 a month--and Mr. Shuman was always afraid that if he raised the retainer, they might look elsewhere. When Paul Kelly became president of the California Bankers Association, it got to the point where people around here were just all over me like a tent: "Why don't you do something about this?"

So I went to see Paul Kelly, and I just told him, "Paul, are we doing good work?" He said "Yes." I said, "I want to let you in on something. We're not going to continue to do this work at this price." He kind of looked at me and he said "You know, John, I've been expecting somebody from your firm to come over and tell me that for ten years." So obviously we got the thing adjusted to a more reasonable basis.

Then I did work for Conrad Bruce. They were stock brokers. Crocker Estate Company, miscellaneous real estate matters.

Hicke: And that would be buying property?

Austin: Yes. Buying, leasing. They had a zoning problem. There are a couple of little companies, drafting articles of incorporation,

starting up businesses, such as Hilo Sugar Company--that's one of the sugar-growing companies down in the Islands. Hakalau Plantation: reorganization of that company. San Diego Gas & Electric Company.

Hicke: Was that Spreckels?

Austin: That was part of that deal. Writing a brief with Mr. Cobb on tax refunds.

Hicke: How did you happen to get into taxes?

Austin: I don't know. He wanted the brief so I looked up the law. Honolulu Oil Company, oil and gas matters, that is, leasing, operating agreements, all the things you do.

Hicke: Were their operations partly in California? Or were they someplace else?

Austin: Oh yes, mostly. Industrial Research Lab. I couldn't tell you what business they did, but it says here that we were drafting license agreements, and that's where you have a product and you license somebody else to manufacture it or distribute it or something like that.

Hicke: So they were doing the research?

Austin: Yes. And drafting. Now here's a probate matter. I drafted Ed Kent's Declaration of Trust. And now we get into what I talked to you about earlier in 1947 and 1948 before Mao Tse-Tung took over China. Here's the first notation. Williams International, which was a miscellaneous trading corporation. And Dean & Company. These were two trading companies, and I handled some of their commercial transactions in Shanghai.

Hicke: What kinds of transactions did you do for them?

Austin: Oh, they'd buy stuff in the United States and sell it in China, or they'd buy stuff in China and sell it in the United States, basically. They didn't make anything themselves. They were traders.

Hicke: So what kind of legal work would you do?

Austin: Well, writing these distributing agreements and contracts and things of that kind. Then Nestle Chocolate was a client of Mr. Clark's. That's that great, big, international concern. They had some commercial problems that we worked on. I see here:

"government contract problems for Arrow Lab Development Corporation." That's another whole field: government contracts. Very complicated. Has its own rules and regulations and all that. That's dealing with the United States government.

Hicke: So you have to research all of it?

Austin: Oh yes. You have to get up on that. Then Blyth & Company was one of our principal underwriting clients, thanks to Judge Holloway. We did a lot of work for them: underwriting and loan agreements and things of that nature. And then I worked on the San Diego Gas & Electric Company liquidation when they folded that company up. I worked on the purchase of the Sutton Moore Tractor Company.

Hicke: Who was purchasing that?

Austin: I can't even remember. I'd have to go back. Somebody was. Dinwiddie Construction Company has been an old and valued client of the firm for many years, and I did some corporate matters for them. Foster & Kleiser--outdoor advertising matters. I told you that I had that silly quirk. I wouldn't do the outdoor advertising, but I was willing to do the corporate work. Why, I don't know.

Here's a lady that had some attachment on her properties. I had to lift those attachments.

Hicke: For financial reasons?

Austin: Yes. I wouldn't have any more idea on how to lift an attachment now than the man in the moon.

Here's Empire Millwork. That was a lot of plywood and other timber agreements. They're very special kinds of contracts.

Hicke: How come?

Austin: Well, it's got its own terminology regarding how you grade and measure this timber, and this is all built into the contract: what you pay and that sort of thing. I drafted Dan Murphy's will. For Charles Blyth I handled his oil and gas leases in Wyoming and for Reserve also oil and gas matters.

Central Eureka Mining Company was a company listed on the San Francisco Stock Exchange. They got into a proxy fight, and it was pretty obvious that our client, the management of Central Eureka, was going to lose. So, since it was a loser, Foerster and Holloway thought it would be good experience for me to handle it.

And it was good experience, because I learned a lot. In future proxy fights I was able to win many times because of the experience I'd had on this one. And Miss Capelski at the San Francisco Stock Exchange welcomed me after the fight was over with the comment "Well, John, Central Eureka Mining Company is the only company listed on this Exchange that ever got into a proxy fight in which all of the incumbent directors were booted out."

Hicke: Oh, my word.

Austin: So that gives you a kind of a thumb nail sketch of what a thirty-four-year-old, second-year associate with considerable corporate experience would be doing in that day and age. It's a lot broader than people would be doing today.

Hicke: And I also have to wonder if you ever got any sleep!

Austin: It wasn't all that tough. I had a system, because I was determined that I was going to have dinner--supper we called it--with my kids, because to me, that is the great communication time for families. And in busy lives, that's about the only time families get to talk, except on the weekends.

So I'd get home every night at 6:00, hang my hat up, and wash my hands. We'd eat dinner, and then I might read to the younger kids after dinner. The older kids would do their homework. Then maybe about 8:00, I'd pull my briefcase out and if I had work, then I'd work from 8:00 until 11:00 p.m. I didn't have to do it all the time, but I had to do it some of the time. That's the way you got the work done. That's what I keep trying to emphasize to these people: that you've just got to carefully budget your time if you're going to give the various constituents in your lives the appropriate attention which they're entitled to.

Hicke: Did you do any trial work at all?

Austin: No.

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Austin: Mr. Clark asked me to look at a lawsuit involving the Honolulu Oil Corporation, and it seemed to me the case ought to be settled. Of course I didn't have any idea what they should settle at, but I just knew the best thing they should do was to get rid of this guy or he was going to cause all kinds of trouble. Mr. Clark basically felt that way too, but to Mr. Mattei, the head of the Honolulu Oil, like so many CEOs, this was a matter of principle and he wasn't going to pay tribute.

So we went down to Fresno and we demurred to the plaintiff's complaint. Demur means that you question the technical correctness. We demurred so many times over a period of time that the plaintiff finally got the idea of how to write a complaint. I carried Mr. Clark's brief bag down to Fresno when he made this argument in Fresno and to my knowledge, that's the only time I ever appeared in court as an active participant.

Now on various matters later on, when I had the lead as the corporate counsel, I would go, but in Fresno I was a "litigator." I was number two; didn't say anything, but there I was. If Mr. Clark had a heart attack, I'd have to get up and talk. That's the only time that I went to court that I can recall.

Hicke: Was that by choice?

Austin: Yes. I think I told you earlier that then I decided that litigation to me was too tedious. The courtroom stuff is fun, but all this maneuvering and discovery and writing briefs and all that stuff--well writing the briefs is fun, but the preparation for trial is not my cup of tea. I never went into litigation, and I'm very happy that I didn't. I'd love to have tried cases and I now love to act as a settlement judge, and I do that and I arbitrate cases. But I'm not born to sit around and worry about pleading and all that. That was my one excursion into litigation.

Hicke: Anything else about the first year or two? There's something about Japanese banking?

Austin: Oh yes, early on; yes that must have been about '47 or '48. The Japanese really thought the thing through very fast. The Sanwa Bank, which was then a small Japanese bank, became a client of Mr. Shuman's, and I did some work for them. What I did was to get them the authority to establish a limited banking office here in San Francisco. It wasn't a full banking office, it was limited. In other words, they couldn't take deposits, but they could make loans and they could have bridge financings and international trade and things like that. That was the Sanwa Bank.

Hicke: How did Mr. Shuman get them?

Austin: Mr. Shuman was Mr. Bank Lawyer in California, just going away. I'm sure by reputation they heard he was the best; so they got him. A lot of people came to him like that. Actually we should have paid more attention to Sanwa, because in due course they started using other people. We're now back in the picture in a very big way, but we had no business ever to let anybody else in the picture. We had such a head start and were so formidable in

banking; that's one of the things this firm is noted for is its banking expertise.

Some members of Austin's family

Top right: Grandfather Cleland Austin, ca. 1890s

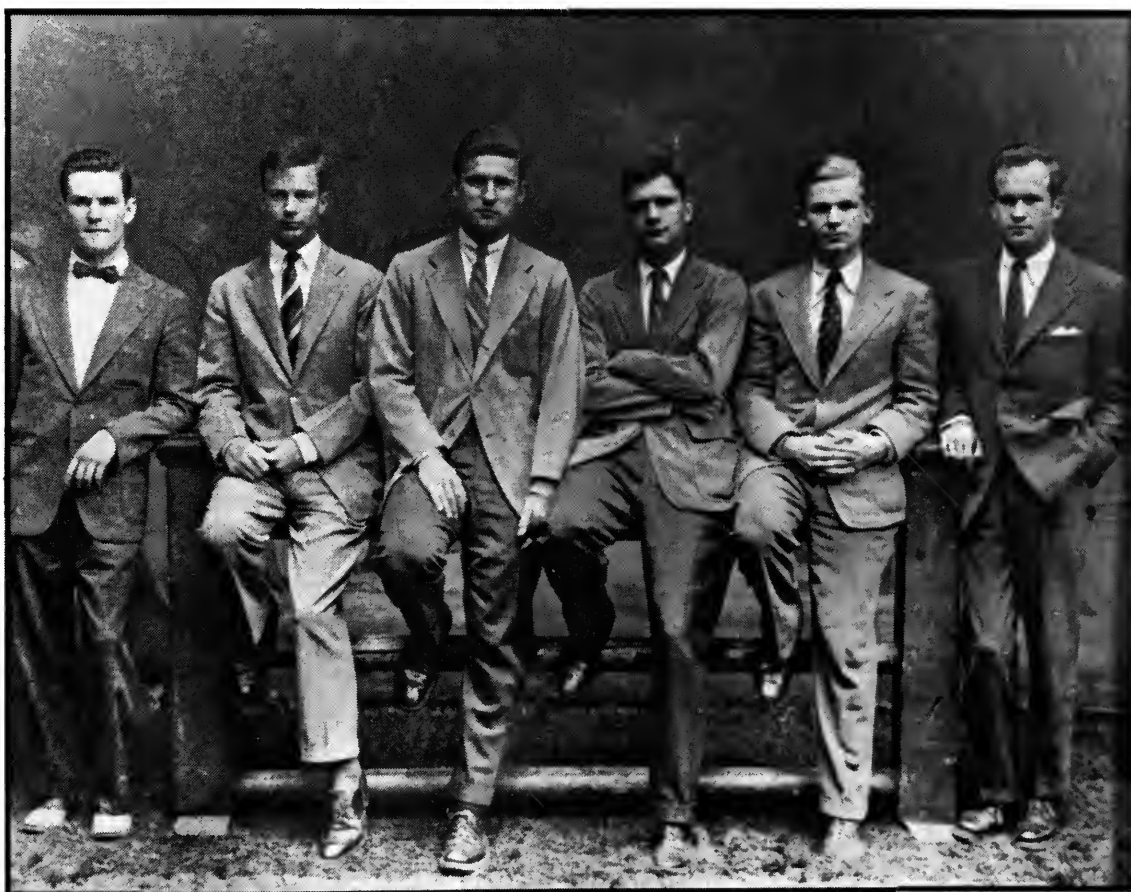
Below: Father Chellis Austin, 1929

Lower right: Mother Edna Page Austin (on right) with Austin's aunts and uncles





1935--college scrub football squad (Austin is in back row, fifth from right with arms crossed)

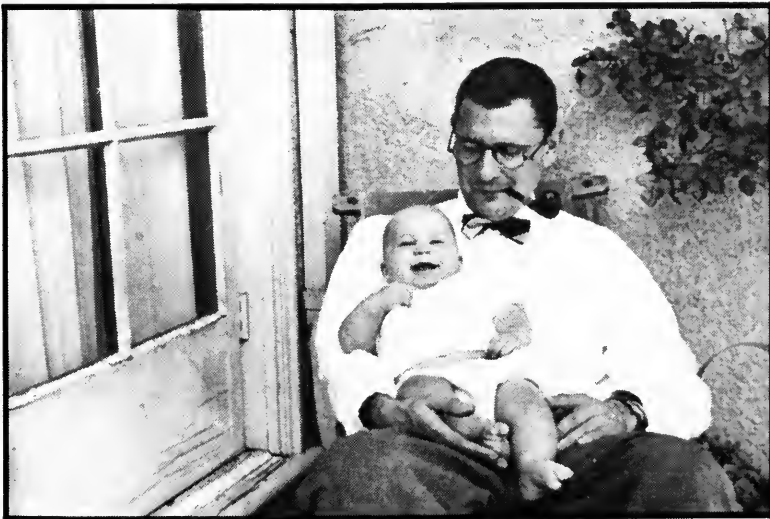


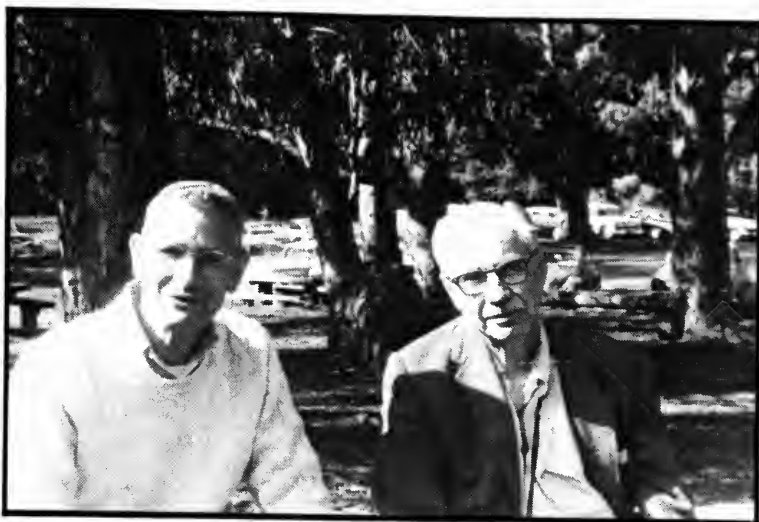
1939--law school friends on the Yale "Fence" (Austin is third from right)



Left: Joe Austin, 1955

Below: John Austin and son Jeff,
1951





Austin with Judge Holloway, ca. 1955



Austin with Judge Holloway, ca. 1975



Betty Austin, 1980s



Austin's children, left to right: Chadd Austin, Judith Page, Kate Austin, Jeff Austin



John Austin being interviewed in his office, 1990

V MORRISON & FOERSTER IN THE 1950s

[Interview 3: April 30, 1990]##

Capital Financings

Hicke: We ought to start out with a little more about the clients here.

Austin: I should make a slight correction in something I said in Interview Number Two. While there were capital expansion and financings in the '40s, in reviewing my time notes for the '50s I find that there was vastly more of that type of work done by Morrison in the '50s than the '40s, and of course we were freed up to a certain extent in 1956 because we lost the [Crocker] Bank in 1956, and all the energy we'd been putting into that could be turning to these other activities. So really it was a combination of both that caused this tremendous preoccupation with both financings on the borrower's side and on the underwriter's side. We represented both in public and private financing.

Hicke: Was this not only a change in the firm but perhaps a sort of trend in the industry?

Austin: Oh yes. I suspect other people looking at their time notes would have the same observations. It's interesting, because then, just as we lost the bank in 1956, most of our underwritings started to peter out in the early 1960s. Blyth and Co. was bought by another company, and we ceased doing all of our underwriting work for them. The other small underwriters that we had previously represented slowed down and they just didn't have business, so that until our corporate finance group was reinstituted and rejuvenated really with the arrival of Bill Sherman and Bruce Mann in very recent years, we were absolutely out of the market as far as representing underwriters was concerned.

So this shows you the ebbs and flows of the practice. Just like the bank. We were out of the business in '56, but then we came back strong in '63, and then we lost Crocker through its merger with the Wells [Fargo Bank], but Bank of America seemed to pick up the slack, and if something happens to the Bank of America I dare say something else will come up.

How New Clients Come In

MJM&M

Austin: Anyway, now to the clients. I thought it might be useful to report on three case studies of how you got a new client in the '50s. The first one I'm going to talk about is a little oil company called MJM&M Oil Company. George Keyston, who was a very good client of the firm, was Mr. Foerster's client originally, but in line with this push-down theory that I've been stating that Morrison is famous for, Judge Holloway had sort of moved in and he did most of Keyston's work, and then Judge pushed it down to me, and so I was the third man on the ladder.

At the time I'm about to speak of, which is 1951, George Keyston was calling me for the practical reason he knew he could get Mr. Foerster's best thinking on the subject through me at far cheaper rates. Anyway, George Keyston called me one day and he said, "John, I think we ought to take over a small dormant company that is listed on a stock exchange, rejuvenate it with capital, and go at entrepreneuring in that way."

I said, "Well, Mr. Keyston, that's fine. What have you got in mind?" He said, "There's a little oil company called MJM&M Oil Company, and I have a feeling that we could take them over. I have an appointment to see them this afternoon. Would you come along with me?" I said, "Yes."

We went over to this office. There were two old fellows sitting there, and George Keyston started to say that he was interested in acquiring an interest in this company. These fellows said, "We'd love to have you take over the direction of the company and the board of directors." Mr. Keyston said, "Fine. Why don't you appoint John, here, and me directors of the company, and you fellows resign, and we'll appoint a third and maybe increase the board to five."

In this manner, just sitting there, we had the fastest takeover I ever worked on, and we got the medium that we wanted,

which was a publicly traded company. MJM&M went on to bigger and greater things and finally ended up as Anza-Pacific Real Estate Development Company that developed that area just south of airport, which you can see very clearly as you come in on a plane to San Francisco. There's a big block of buildings in there, just north of the Broadway-Burlingame overpass. That whole area was developed by these people.

Hicke: All those hotels and restaurants and so forth?

Austin: All that.

Hicke: What was Mr. Keyston's business?

Austin: He was a stockbroker, but he always had an eye for what I call entrepreneurship. He was interested in start-up companies and getting other people to put money in, and that's what he did. MJM&M made some modest progress, and people who put their money in didn't lose it; they made money. It increased in value over time for people who held on to it.

Hicke: He was sort of an early venture capitalist?

Austin: Yes, that is what you'd describe him as.

Hicke: How long were you director of the company?

Austin: Well, I was director until I made up my mind in 1959 that at least for me, and it's now more or less the firm policy--I didn't think it was appropriate for lawyers to be directors of companies that they were also general counsel to, where there's a client relationship.

I had a rather unfortunate experience in 1959, which we'll come to later, which led me to this view. And so I resigned from MJM&M and I resigned from Yuba [Consolidated Mining Company], and I guess one or two other boards that I was on. I'm very happy that I did. For major clients I always went to the board meetings, and I was expected to speak, but I was speaking as a lawyer, not as a director.

Hicke: Let me ask you one more question. Do you recall any of the meetings of the board of directors where there were any particular challenges?

Austin: These companies were expanding, and so they'd be discussing tactics or the strategy of what company should they acquire, why should they acquire it, etc. I always perceived my role as not

determining whether it was a good business proposition; I always saw my role as explaining to them what the pros and cons from a legal point of view were; I just focused on that and didn't try to get involved in the business judgment.

There's a wide variety of views on that in the bar, particularly in the East. By no means do many fine lawyers in the East have the view that I have. They serve on boards and they think they're very useful on boards as board members. And they don't think they have any trouble distinguishing between their legal responsibilities and their board responsibilities, but I took a different view.

Consolidated Freightways

Austin: The second one I wanted to discuss is a company called Consolidated Freightways, which is still a major client of the firm. Here again, and this is typical of the way business is often generated, we, through Mr. Holloway really, had gotten to a point with Blyth and Co. where we were doing a tremendous amount of work for them. Blyth had a young analyst working for them named Jack Beckett. Jack later went on to become the chairman of Transamerica [Corporation] and he built the pyramid tower and all that business. Anyway, so one day we got a call from Blyth that Beckett was going to be looking into a trucking underwriting. Well, nobody had ever underwritten a trucking company before in the United States, but Beckett was just a very, very sharp analyst, and he felt that the whole trucking industry had great promise and that Blyth should get in there and start helping them to raise capital to increase their operations. His first choice was Consolidated Freightways.

Hicke: Why hadn't anybody underwritten trucking companies before?

Austin: Trucking companies? Damned if I know! They were too small and too insignificant and too risky. The railroads were king and these fellows were just getting started.

So I got to working with Beckett on this and we went up to Portland where this company was headquartered. We did our due diligence, which was to find out all about the company, and I wrote the prospectus with Jack Beckett. The people up there, the company people, were not familiar with this type of public financing, which involved getting permission from the ICC [Interstate Commerce Commission] and all that sort of thing, and so we did the whole thing.

It was a very modest underwriting. It was 100,000 shares at \$10, which is a million dollars. Now today, you couldn't get a major underwriter to look at a million dollar financing. They just wouldn't bother. But Beckett had this idea, and he was absolutely right, that trucking was here to stay and he wanted Blyth in the front seat. And of all the major underwriters in the United States, Blyth was number one in the trucking and maybe for all I know still is.

Hicke: Are you saying then that he looked around for a trucking company with which to initiate an investment banking relationship?

Austin: Yes.

Hicke: Or do you think that Con Freight came to him?

Austin: Oh, no. He went to them. So, as I say, we went up there, and they had the most modest financial capability, and they were running things on a pretty shoestring sort of method. But Beckett saw a real promise in this company, and we did three financings, each increasingly larger common stock financings. We did one for the 100,000 shares, then we did one in 1952 for more shares at a bigger price, and we did one in 1953 for more shares and a bigger price.

Then the company came to Morrison and they said, "We would like you to represent us." So I called the Blyth people and they said, "Sure, John, you go ahead and change sides and we'll get somebody else to represent us. We'd feel more comfortable with you there." So Morrison became, in effect, general counsel for Consolidated, and give or take with the infusion of inside lawyers, that's been a very major client of the firm.

What that illustrates is that it wasn't an individual that brought the client in totally; it was the system. And it was a pass-down system; we got Consolidated because we were held in high repute by Blyth, and we were held in high repute by Blyth because of Mr. Foerster and Mr. Holloway. And then we got into Consolidated because they had pushed this particular underwriting down to me and that gave me my chance. I think it illustrates as well as anything I can think of why at least a good many of us in the firm have always felt this is the only way to practice law.

Hicke: Yes, that's an excellent illustration. Let me ask, do you think that this financing contributed considerably to the success of Consolidated Freightways?

Austin: Oh, no question about it. It became the largest trucking company in the United States, and it was primarily through these financial underwritings, financings, that Blyth did for them, and mergers and acquisitions later on, but we'll get into those stories later on. But we were a party to Consolidated's becoming a nationwide system. When we first got there, they were running between the State of Washington and San Francisco, and under the old, archaic ICC rules, they couldn't take the direct route to Salt Lake City. They had to go up to Boise and then down; PIE [Pacific International Express] had the direct route. That's all been changed now. Trucking companies can go where they want to.

Memorex Corporation

Austin: The third illustration that I have which occurred in the early '60s was a company called Memorex Corporation that in its day was the biggest thing in magnetic tape.

One day four fellows, who looked like fugitives from a high school basketball team, came in to see me, and their spokesman was a fellow named Larry Spitters. He said that they wanted to start a magnetic tape business, and I said, "I don't know a damn thing about magnetic tape." "Oh," they said, "That's not important. We'll give you a book on magnetic tape." We'll get into Memorex a little bit later as a client, but I wanted to explain how they became a client. I asked Spitters, "How did you happen to come to us?" You see, I knew Larry, because he had worked for Blyth and Co., and I had run into him on these other deals that I'd done for Blyth. He was a young fellow working in Blyth, and then he quit Blyth to start this company.

He said, "The reason that I came to you was because we are being financed by the Bank of America." The Bank of America bankrolled lots and lots of companies, and the history of California would be quite different if there hadn't been a bank of America. Mr. [A.P.] Giannini was a great believer in getting people started.

And there was a fellow who was a lending officer at the Bank of America whom Spitters had convinced that they should do this, that Bank of America should finance them. I had done quite a bit of work with him, representing clients who were borrowing money from the Bank of America, and so he recommended to Spitters that Spitters come to us. So Spitters didn't come to us because he knew me; Spitters came to us because the Bank of America, his chief financing source, suggested to him that he come to us, and that was because I and others had done work with the Bank of

America which they thought was creditable and that's why they recommended us.

Well, this company became a huge success, and went on, and then it was taken over by a larger company and we ceased to have anything to do with it, but one year Memorex represented as much as 33 percent of our income.

Hicke: About when was that?

Austin: Oh, that would have been in the early '70s, late '60s. And on this old pass-down theory, I hung in on Memorex for a while, but then I had both Marshall Small and Dave Nelson working on this client. Marshall got diverted off onto some other equally important things, and Dave Nelson took over the day-to-day operation of Memorex, and eventually he was the Morrison contact with Memorex. I'd done my thing and moved on.

That's what we hope these people today in the firm will continue to do. It's so easy in a competitive society to clutch, but that's the worst thing in the world for the firm, and yet it's very hard for some people to pass down and have enough confidence that they can go out and get something to keep them busy.

Hicke: How did the clients react to this?

Austin: They like it, they like it. You take a young person and you put them on an account and the clients like it because the younger person is more accessible; he or she is much easier to get hold of. They know that they're going to have a much more personal concern than with the older person who's got other responsibilities and interests. And so really it works, as far as I'm concerned. It's just the only way to go, because then the younger person gains in experience, takes over the account, the older person goes out and tries to get another account, and sooner or later, this younger person who's taken this account over, now he or she has developed a reputation and her or she start bringing business in.

Now you can't start bringing business in until you've had some business to handle. At least, in my experience you don't do it.

Hicke: How much oversight do you provide when you're passing down?

Austin: Well, they used to kid me and say that--to use a Reagan analogy--they said, "You were so busy doing your own things that

you had a very light touch." So I can't say that I sat peering over their shoulders.

I guess one of the other most common ways--and there's nothing unique about what I'm saying now--of obtaining clients is this: you work for somebody, and you're in an adversary position to X; when the deal is over, X likes the way you handled your client. So X comes over. We've gotten a number of underwriting clients in that way, and one of the chief ones was J.S. Straus & Co. which Marshall Small ended up doing the major counseling on.

Hicke: That's what happened to you in the case of Consolidated?

Austin: Sure.

Hicke: How did the relationship with Blyth then go as regards Consolidated? You are now on the other side, you said.

Austin: Well, that was fine. My good friend Sherman Chickering of Chickering & Gregory took over the underwriting responsibilities of Blyth on the Consolidated account, and that was fine with me, because Sherman is a very easy fellow to work with and a good lawyer and so it was a very smooth transition as far as I was concerned.

Hicke: And you continued to do other things, then, for Blyth?

Austin: Oh yes. It was with their encouragement that I made the switch. Consolidated became one of the major clients of the firm. These things go in waves, you know; for a time one client will be a very major thing. Now Fujitsu [Ltd.] is a big client, because of this arbitration that Raven and Nelson have been working on.

For a while Memorex was the big deal; Crocker Bank was the big deal. You know, through the years different clients have assumed different importance. And as I mentioned to you at the beginning, when I first came there were the Big Five clients, and by the time we're talking about now, they were all gone but the bank.

Hicke: So that, then, underscores the importance of this pass down theory.

Austin: Well, you've got to keep going. You bet. And you've got to figure you can't stay still. You've got to keep moving, and the '90s are going to be a very interesting time. There are going to be firms with vision and good personnel policies and really good internal strength, and some of the ones that look pretty good now,

I think are going to fold. They just won't be ready to meet the challenges of that era, just as we almost didn't in the '40s and '50s meet the necessities of a change in our practice.

Learning Experiences

Hicke: That brings up an observation that I wanted to make which perhaps you could comment on, and that is: MoFo went through this period in the '40s and '50s when people here such as you observed and learned their lesson regarding the lack of planning. Is that one of the reasons why you put the firm in the direction where it's going now, which is looking to the future?

Austin; That is the reason for the so-called apocryphal Schroeder meetings, and that doesn't come up until the '60s.

Hicke: Yes, I know. It's true that the story of that doesn't come up, but it just strikes me that the firms now that didn't go through that maybe in the '40s and '50s are going through it now.

Austin: Well, that's true. A good example would be Pillsbury. Pillsbury had picked up an awful lot of good managerial techniques suitable for the '40s and '50s, and they just expanded like crazy. They had two super clients--the telephone company and Standard Oil--¹⁵but then you come into the '80s and they had not taken on the high tech equipment that a firm needs. They had not moved into Los Angeles, even though with the Standard business down there they could have done that with ease forty years ago, but they didn't choose to. But now, they're turning things around, and you're going to see Pillsbury right up there in the forefront. Because now they've got management policies going that are meeting the issues of the day. They didn't go under.

However Chickering & Gregory did. As I said in our last meeting, the Chickering & Gregory of today is just a pale imitation of the former firm. I think there are about fifteen lawyers in the firm, and when the old firm hit its peak it probably had sixty-five or seventy lawyers.

¹⁵ Pacific Telephone & Telegraph Company, and Standard Oil Company of California.

Hicke: It sounds like this sort of learning process is something that happens from time to time.

Austin: It just illustrates that those who don't sit and peer in the waters looking for the trends are going to get left in the station. Nothing is static about this profession anymore. As I said in an earlier conversation, it was fairly static from Mr. Morrison's 1883 to 1946, '47, but then things started to change.

More Firm Clients Austin Handled in the 1950s

Hicke: Do you have more notes that you want to talk about?

Austin: No, there are just tons of underwritings, financings in 1950 and '51. I think I would close on the '50s with this point: I forget whether it was 1950 or 1951 when the bank started closing on Saturdays, and we finally closed on Saturdays. Up until that time, of course, we worked Saturday morning. That would be the fitting end to the period from '46 up to say 1952, 1953.

Hicke: I have a few other clients to ask you about: Ryder Systems.

Austin: That was part of this Beckett expansion in the trucking industry. After we had done all these financings for Consolidated, Beckett and I went down to Florida in 1955-56, and we did the same thing with Ryder Truck Rental Systems that we'd done with Consolidated.

We went down and we did our due diligence, and the First National Bank of Boston was very aggressive in those days--they were their bankers and very helpful to us. So we had an underwriting in '55 and another one in '56. Ryder Truck Rental Systems was a truck rental system, not a trucking company. It had a small trucking affiliate, and I think today they have even spun off their trucking. They got to be fairly big; Ryder Systems today is now back to what it was originally, which was just a truck rental system where they would rent you a truck and you could drive it anyplace you wanted and somebody'd pick it up just like a car rental.

The procedures on Ryder were just exactly the same as they were on Consolidated. We went in; it was a little company with no system and no organization and Beckett along with the First National Bank of Boston got them all straightened out and made a big company out of them.

Hicke: Did you become a director of that one?

Austin: No. And I never became a director of Consolidated. I was asked to join the board, but I was in my new, nondirector mood when that request came along.

Hicke: Burgomeister Brewing?

Austin: Burgomeister Brewing was an underwriting by another underwriter client of ours, Conrad Bruce & Co. Burgomeister Brewing was the San Francisco brewing company which had a brewery out there very close to where the old ball park used to be at Bryant and 16th Street. This was a small, family-owned brewery, and we took that company public, wrote a registration statement, and it was a first-time offering. Everything went very smoothly and that company got going. Sooner or later, in the great era of beer company amalgamations, it got swallowed up by somebody else. We may have done some subsidiary work for them--that's how you picked the name up--but basically the big thing we did for them was through Conrad Bruce.

Hicke: Is Conrad Bruce the name of a person?

Austin: Conrad Bruce is the name of an underwriting investment banking company. No longer in existence.

Hicke: Was there such a person as Conrad Bruce?

Austin: Barnaby Conrad's father was the Conrad of Conrad Bruce, and Malcolm Bruce was Mr. Foerster's great friend, and that's how we got that business. Mr. Foerster's tentacles stretched out a good ways in San Francisco; he was real old San Franciscan. As a result, we had a lot of clients like Conrad Bruce.

Hicke: Did he belong to various clubs?

Austin: Oh sure. Yes, he was a domino champion at the Pacific Union Club. He belonged to the Bohemian Club.

Hicke: What about Bank of California?

Austin: That was one of the Blyth underwritings that Judge Holloway took the leading oar on, and I was his man Friday. That was a typical example of another industry that needed more capital in order to carry on its business; for a bank to grow, it has got to grow in capital as well as in deposits. It can't just keep adding deposits, because there's got to be a ratio between them. For

Blyth & Company, we underwrote Bank of California; we underwrote the Anglo Bank before it merged with Crocker.

Hicke: This was clearly part of all the postwar growth in the Bay Area in California?

Austin: Yes, and we're talking about the Eisenhower years. People tend to forget what a tremendous capital expansion went on in that period.

Hicke: Having to do with regulatory policies, or tax policies?

Austin: Well, which came first, the chicken or the egg? The Eisenhower administration was in favor of private expansion and they encouraged it and they didn't discourage it with prohibitive legislation. And the times were right, the country was ready for a big jump forward, and so it took it. This is just a pale reflection of what was going on all over the country.

Hicke: It's a nice little microcosm. There were some small oil and gas companies, I think, like Wilshire?

Austin: Mr. Blyth of Blyth & Company, Charlie Blyth, thought that Judge was one of the great lawyers, which indeed he was, and particularly in the oil and gas field, as well as in the financial field. So Judge was really Blyth's principal oil and gas lawyer, and Wilshire Oil was a play, if you will, that Blyth had, and Judge handled the legal aspects of it.

That was something that they invested in themselves, and then I think they sold Wilshire Oil off at a tremendous profit. But the underwriters were much more inventive and constructive than these greedy s.o.b.'s that you see now, who are seldom doing anything constructive as far as I'm concerned, but mostly destructive. They are so concerned with making zillions of bucks.

Hicke: Was there any other oil and gas work?

Austin: We had met through the Keyston's Jimmy George, who ran Pacific Oil and Gas. He came in to see me, and we did quite a bit of work for him for a while. Then we had a situation in which I thought that Jimmy had misrepresented the truth to me, or to put it in plain words, lied to me. So I told him I didn't think we had any more interest in representing him, so I kicked him out.

Then he came back a little later and claimed he was a born again Christian, and so we tried him out for a while, and then he just sort of tailed off. But for a while we did quite a bit of oil and gas work for Jimmy. His was one of those small oil

companies and doing a lot of farmouts and looking for oil primarily; he wasn't a producer, he was an explorer.

The other thing I notice, I really should mention because it was kind of historic. In order to improve our shipping, the United State's shipping, which was kind of going downhill, one of the things that the Eisenhower administration put through was a thing called Title XI financing. This was very, very complicated stuff.

What it involved was a private institution, such as a bank, would loan money to a company such as Matson Navigation Company, and that loan would be guaranteed by the United States, which produced a very low rate of interest and was a very, very profitable source of capital to shipping companies. Morrison, through me, represented Crocker on the first Title XI financing. A fellow named George B. Pidot of New York, Sherman and Sterling, represented Metropolitan Life [Insurance Corporation], and I represented the banks.

Now, Mr. Pidot was really the architect and innovator of the documentation that ultimately grew out of this Title XI financing. I was sort of in his slipstream on that first financing. Then later on we had more of these from Matson and we ran them. They were just bank financings, and we simplified the process a great deal, and I guess today Title XI financing is fairly routine sort of stuff. If you qualify, you can get it.

But that first time, the law was poorly drawn, it was very uncertain, and I must say, everybody used to have some hard words to say about Mr. Pidot, but on the other hand, he certainly represented his client well and he got the basic concept down in writing. It's much easier to take somebody else's work and improve it than to have to do something from scratch. So that was very significant. That was in the '50s.

Hicke: That was only for shipping?

Austin: Yes, just for shipping. Well, for instance, one of the underwriters--you might sort of close out this underwriting story with this--one of the underwriters we represented was a company called Calvin E. Duncan & Co., and my recollection is that they were the principal underwriters of Eichler Homes. No, J.S. Strauss was. Eichler Homes. And Simon Hardware. Marshall Small was the primary lead person on those jobs.

I guess it was in the early '60s or late '50s, Marshall conceived for Consolidated a sort of blanket security instrument

for the financing of trucking terminals, which worked very successfully, and he deserves full credit for that.

Hicke: Could you elaborate on that just a little bit?

Austin: It was a financing document that enabled these trucking companies to collateralize their terminals and raise capital by having their terminals the security.

It was a fairly complicated thing, and Marshall got it all down on paper in one document, and it was a pretty fine piece of work, I'll tell you.

Hicke: And it was used, then, by several--?

Austin: It was used by Consolidated Freightways primarily.

Hicke: Is this York & Company?

Austin: That was one of the other underwriters. Marshall had a great deal to do with them. That's why it's not useful to say who brought something into the firm, because if you analyze it closely you'll find that generally speaking--not always, but generally speaking--in business now, litigation's different--but in business, these things generally have a historical antecedent, one way or the other. Not always, but quite often.

Hicke: From my point of view, I think that's what's important, not so much who brought it. Your illustrations of how things come in are excellent. That's really good information.

Austin: Well, as I say, it's an institutional process, and people want to remember that. It's very easy to say to yourself, "Well, I guess I'm a pretty good lawyer; look at all the business I've brought in." That's not the way it works.

Hicke: Let's see. Did the California Bankers Association come along in here?

Austin: Oh, no, I think I mentioned earlier, the California Bankers Association was one of the firm's oldest clients, and had been Mr. Morrison's client. And I think I told you the story in our last meeting of how Mr. Kelly finally raised the retainer for the California Bankers, right?

Hicke: Yes. You did tell me that.

Austin: California Bankers was very good for the firm in the sense that in the practice area we were in in those days, which was California, period, we got a fairly statewide reputation as good, sound bank lawyers. And we got that through our representation of the California Bankers Association, because we would write these opinions for these small country bankers on legal questions to try and put them in as simple terms as possible, so that they could get the legal significance and would not get all mired in technicalities.

So we were pretty well known throughout the banking industry in California--in fact, very well known--because of our representation of the California Bankers Association. I always used to feel that although it was like a charitable handout, in terms of the amount of work we did for what they paid us, it was probably worth it to the firm in terms of the enhanced reputation.

Hicke: Is that the point, then, of some of these amicus curiae briefs that you filed? I think that's one [looks at papers].

Austin: Let me see who's on here and I'll tell you.

Hicke: Bank of Moran v. England, and Edgar Washburn was the petitioner. Thomas Donovan argued the case for respondent.

Austin: I'm surprised my name was on the brief. That's odd.

Hicke: And I have another one, Bank of America National Trust and Savings Association v. the United States--

Austin: Yes. That was part of our representation of the association, that we would file the amici briefs. Somebody in the litigation department normally wrote the brief and argued it, and that's why I was a little surprised that my name is on this one. That's very interesting. Bank of Moran v. England, eh? That's 385 U.S. 99.

Hicke: And here is the other one, Bank of America. Those two came up in a Lexis search, that's why I have them.

Austin: I don't see us involved here. It says Samuel B. Stewart, Bob Fabian and Alfred Twigg. Well, Sam Stewart was the general counsel of Bank of America at that time, and Bob Fabian was running the Los Angeles office of Bank of America's legal department at that time, and who Mr. Twigg was, damned if I know.

Hicke: I guess I didn't get enough copied of that, but here's the Lexis search with your name on it, amicus curiae brief.

Austin: I'll be damned. Isn't that funny. I just don't remember that process at all. In many firms, they'll put the senior person's name on the brief--as a matter of fact, I wrote a brief back in the '40s, and a nameless partner filed the brief, put his name on, took my name off, and that's the way it went.

All I can say is that I'm really surprised, because I don't remember these cases and I don't remember working on these briefs. And I had thought I could say that I never permitted my name to go on a brief that I didn't work on. So I don't know. Maybe I did, it's a long time ago.

Hicke: Yes, it sure is. Then I have one other--this case, Reynolds v. Reynolds--that came up, too.¹⁶ That was an interesting case, because this woman and her husband were getting a divorce, and she was awarded the shares of stock, and he ran off with them and left the country, I guess. And I don't know if you played some part in that or--

Austin: Here it says "John P. Austin and Marshall L. Small." Well, the key to that is you can bet your boots that Marshall wrote that brief. I'm going to have to look at these things. I can't believe that you're picking up my name on briefs that I didn't work on.

Hicke: Maybe somebody else came along and put your name on them instead of taking them off. [Chuckles]

Austin: I'm going to ask Marshall about that.

Hicke: You can hang onto those copies if they'll be of any use to you.

Austin: No, I think just this Reynolds v. Reynolds.

Hicke: And then I have a note that you did some work for Provident Securities.

Austin: Yes, Provident Securities Company was the investment arm of the Crocker family, the William W. Crocker family, and along with Crocker Estate, which was the real estate arm of the Crocker family, Provident was the investment. That is, securities. And there was a fellow named Dan Murphy, who was a loyal Crocker

¹⁶ Reynolds v. Reynolds 7 Cal. Rptr., 737 (1960).

retainer, who ran Provident for many years in a perfectly sound but rather unimaginative way.

Then the Crocker people induced Emmett Solomon, who was at that time running one of the big sugar companies in Hawaii (American Factors), to come back to the mainland, come on up to run Provident Securities Company. And Emmett really put some juice into the action because he got them into Texas Instruments, and made millions of bucks.

Then he went on from Provident Securities Company to become president of the Crocker Bank and later chairman at Crocker Citizens and Crocker as we knew it, until his retirement at 65, when Wilcox took over the Crocker Bank. I would have to say that Emmett was my favorite client. We had a very close personal relationship.

Hicke: And so what was your part in this?

Austin: In Provident? When you say "mine," remember it was a team. It might just as well have been, in a given instance, Marshall--he'd have been the most likely--and I'd do some, he'd do some, maybe we'd do some together. We'd buy different businesses for them.

They bought out Shasta Water Company, they bought a radio station, they got interested and made a big investment in a company called Pacific Plantronics, which developed a telephone operator earphone which is very successfully used throughout airplanes.

Now they're back to the big one, but for a while this was the big ticket item. And that's a company that came to us through Provident. We became counsel for them.

I represented them for a while, and then Marshall took over, and he represented them, and then the Provident pull in Pacific sort of died down and, I forget, I think Whit Budge at Brobeck--fine lawyer, fine human being, former chairman of the firm--I think Whit had played football at Stanford with the president of Pacific Plantronics, and so the president felt he had to get back with his old buddy. So we were let loose, and Whit went on. But we were in the company through all the interesting formative years. I don't know what the company's doing now.

But that was the sort of thing they were doing. Provident was thinking of buying a hockey franchise. It was into everything. And it was just fun to represent them, because you'd get into all these interesting deals.

Hicke: Shasta was probably a pretty good investment.

Austin: I think so.

Hicke: Certainly must have grown a lot. Okay, that's, I think, most of what I have, unless you had more to do with Food Machinery or Spreckels in this period.

Austin: I think we should have a little discussion of both Food and Spreckels, because, here again, it was in the '50s, late '40s and the '50s, that Food Machinery got into really high gear. Paul Davies [Sr.] just pulled that company up into one of the Fortune 500 companies by acquisitions and this and that and the other thing, all of which we were in, because Mr. Foerster was a director of the company and a close confidant of Mr. Davies.

Hicke: Do you recall working on any of those?

Austin: Oh sure, sure. When I first became a partner, one of the first things I did, Food Machinery had a--

Hicke: This was 1951?

Austin: Yes. They had an acquisition in the Chicago area and I went back there with Jack Pope, who was their financial man. He later became president of Food. Jack and I negotiated the acquisition of this company, and we wrote the agreement and did all the paperwork necessary to get the thing done. And I did a good many of those for Food Machinery.

Hicke: That wasn't American Viscose?

Austin: No, that was a bigger job, and as a matter of fact, I know Mr. Foerster and I worked on it, and I think Judge worked on it too. It was big enough that it took all three of us to get the thing done, but during that period we were very very active working for Food.

Hicke: Can I ask one more question about Food, or are you going to finish up something?

Austin: No, no go ahead.

Hicke: Okay. Were you involved when they acquired the soda ash plant in Idaho?

Austin: Well, I told you the story about Mr. Simplot going out the bathroom window didn't I? Well, one of the things I learned about negotiation is never let the people on the other side out of your

sight, because Mr. Foerster and I were negotiating with J.R. Simplot, who was the phosphate king of Idaho, and we thought we were pretty close to a deal with him for Food Machinery.

He said he wanted to go to the bathroom, and he went to the bathroom, which was on the ground floor, and he opened the window and climbed out. That's the last we ever saw of him. So we said we had to have a house rule from then on that if anybody went to the bathroom, somebody went with him.

Hicke: Well, what happened to that?

Austin: The deal blew up. We never knew why. It's interesting, in the late 1950s, in addition these capital financings, I noticed in my notes that we represented a client buying a local radio station here. So we were in the FCC [Federal Communications Commission] business for a while.

Hicke: Which radio station?

Austin: I can't remember the name of it. Another client that we were very, very active for in those years was a client of Judge's. He brought the business in through Blyth. It was Rheem Manufacturing which made hot water heaters, which were very popular in California at that time. Of course, during that time Judge was also very active on Cutter Laboratories, a pharmaceutical company over in Berkeley, which was expanding left and right. We were doing the acquisitions on that.

Hicke: You mentioned that before. What were they buying? Other research labs?

Austin: Yes. And different product lines. They were sort of in the agricultural product insect repellant area. Cutter Lab had a very good insect repellant.

Hicke: That's what I know them for, but I'm sure they must have been in other things.

Austin: Yes. And then they'd buy different product lines that they liked in different parts of the country. I'm not enough of a pharmaceutical guy to be able to remember thirty years later.

And then I guess we got another rather substantial amount of work for a company called Oregon-California Trucking Company, I think. It was owned by the Rausch family, and we did a lot of work for them similar to the work we were doing for Consolidated Freightways. Consolidated was perfectly happy to have us do this

work, because this company was basically an intrastate California trucker. And, of course, Consolidated was an inter-state, country-wide trucker.

Hicke: So they weren't in great competition there?

Austin: No. And just about then Marshall was really starting to take off, and he did a lot of work with Eichler Homes and Simon Hardware that didn't involve representing the underwriters of those institutions but doing work for the company. Much the same experience that I'd had on Consolidated.

Hicke: Did he come to you when he needed advice and so on?

Austin: Well, Marshall and I always worked very closely. I always said he made me look a great deal better than I actually was. He has a powerful intellectual mind. I may have greater skill with people, but he certainly has got the engines better than almost anybody in the firm. He's just a marvelous person, wonderful guy to work with for thirty to thirty-five years. I'm very fond of Marshall.

And the same thing with Dave Nelson, who is the other fellow. I see more of Dave socially than I do Marshall, because Dave lives on my side of the Bay, and he's been very much involved in the ABA matters. Sort of coming up the track; after I'd been through it, why, he went through it.

Hicke: Yes, I want to get into that at some point. Do you think we have pretty much run down your list here?

Austin: I think we've covered the '50s in pretty good style.
[Interruption] There were a lot of oil and gas matters--Honolulu Oil.

Hicke: What were they doing?

Austin: They were buying properties, having workout agreements with people, operating agreements, all the things that oil companies do to raise the oil out of the ground.

Hicke: Leasing?

Austin: Leasing, the whole bit.

Hicke: They were exploring, or they were in production?

Austin: Oh yes. They were basically exploring and producing. But they didn't refine; they were just an exploratory company.

Another way that we used to get clients and still do in a very material way, is from accountants. L.H. Penney & Co. was a very highly regarded but small accounting firm here in San Francisco, who were experts in agriculture and the equipment that goes into agriculture and things like that. Just as other important work has come to us from accounting firms, they sent us a lot of business.

One of the streams of business that they sent was a fellow named Ray D. Henderson. Ray had a tractor distributorship up in the Valley and we started representing Ray. He sold that and then got into some of the damndest businesses you'll ever know. He developed an oil filter, which consisted of a metal can, and you just put a roll of toilet paper into it. And it was a fairly good oil filter. He developed some automatic, mobile, stop-go traffic lights. I think he finally went broke, but during all these things, we were getting involved in these very interesting and different legal problems, which were good fun to handle.

Hicke: Patents? Did you have to get patents?

Austin: No, we never did the patent work. We did licensing, but we never did patents. Just as I think I told you about Felix Block and his nuclear resonance thing back in the '40s and '50s that we did. We never worked on the patents. We did the licensing of the idea. I think that's it for the '50s.

You know, I've been thinking about this. You've been asking me questions, and I think this is probably the way to go in my area. It would be a mistake to think of the history of Morrison as being just what I've been talking about, because while this was all going on, Bob Raven and Dick Archer were doing all sorts of interesting things in litigation. But I'm assuming you're going to get that from them.

Hicke: Yes. This is going to be like a jigsaw puzzle - you know, a piece here and a piece there, and it's going to make a whole. But, if things occur to you about some of the other aspects of the firm's work, I'd certainly be happy for you to tell me.

Austin: Well, I'd rather let Bob describe the litigation side. I think that would be better, and let Frank Latcham describe the tax side and the probate side, along with Dick Kinyon. Yes, I think that's probably better. And Mel Goldman on litigation, and then some of the younger people like Bill Alsup - you want to be sure and interview him.

Hicke: Okay.

- Austin: He's a very unusual fellow. He's just gone on The Bancroft Library board [Council of the Friends of The Bancroft Library]. He's a fantastic photographer of the wilderness, and I think that's what got him interested in going on there.
- Hicke: So that's sort of the nature of the beast: that I asked you mainly about things that you've done.
- Austin: Well, we're going to have some overall comments, of course, in the '60s.

Dress Code of the 1940s

- Hicke: Oh yes. Well let's go back and pick up a couple of things. We didn't talk about the dress code in the late 1940s.
- Austin: Oh, yes, yes, yes. Well, I told you to read Girvan Peck's piece. I thought I had a copy of that, but you can get it.
- Hicke: I have a copy.
- Austin: All right. Have you read it?
- Hicke: Oh yes, sure.
- Austin: Isn't it beautifully written? Well, of course, in the '40s, it was white shirts. Nobody ever wore a colored shirt. You wore pretty somber suits, and kept your coat on when working in the office. You always wore a hat and, as I've said earlier, the secretarial help was all white, female, and the lawyers were all white, male.

I get confused sometimes because when I do this in the history of the firm, I talk about that, but it certainly is important to note that I can remember the first time there was a discussion in Morrison about hiring a nonwhite secretary--I think a Japanese woman. Some of the old biddies were very vociferous that they weren't going to work with anybody who wasn't white.

I think it would have been Mr. Clark--who would certainly be the one to be in keeping with this--he called one of them into his office and said: "I don't care if we have to fire every single one of you, we're not going to have that attitude in this office." And BOOM, down it went.

And then, in the natural progression of events, we started getting people (as they used to say) of color, and that particular prejudice broke down pretty fast. Now, as far as the lawyers were concerned, as we kind of close in on the '60s, nothing had changed. I'd had my famous to-do with Mr. Shuman in 1951 on hiring.

Hicke: Well, we haven't gotten that story yet. Not on tape anyway.

Mr. Shuman on Hiring Women in 1951

Austin: Oh haven't we? Well, as I say, I do these talks and sometimes it's hard for me to remember what I've said in each place. Well, to me that was a very significant thing, because when they made me the hiring partner in 1951, when I became a partner, I went back to Harvard and Yale. In those days there weren't that many people doing interviewing; so you were welcomed with opened arms. I sat in the Journal Office at Yale and the Harvard Law Review Office at Harvard and saw a number of highly qualified people who were interested in coming to California, including some of the most highly qualified women I've ever seen.

Hicke: Let me just stop you for a minute. Whose idea was it to go back and recruit?

Austin: Well, I think I probably did that, and it was not extraordinary for me to do that, because I came from the East. I knew there was a gold mine there.

Anyway, I came back full of enthusiasm, and at the first firm meeting I said: "Well, I want to make my report." I said: "My report is this. In addition to some fine male candidates, I saw some extraordinarily attractive women with academic records that are just superb. Nobody in San Francisco has been hiring them. Maybe it would be a good time for us to spring a march on them."

There was a long silence and finally Mr. Shuman said: "John, let's take one of these girls" I must say I still use the term "girls"; it's hard to change your habits, you know. I call the men "boys"; so there's no discrimination. Anyway, back to this. So Mr. Shuman said: "John, let's take one of these." I said, "Fine. We'll take a particular girl I have in mind."

He said: "Is she attractive?" I said: "Well, yes, Mr. Shuman. Most of these women are bright." "Is she pretty?"

To which I said yes. Long pause--He said: "John, do you think this woman will get married?" I said "Yes, you know attractive women and attractive men are actuarially certain to get married sooner or later."

Long pause. Mr. Shuman said: "Oh, do you think this woman will have babies?" I was getting a little annoyed, and I said: "Mr. Shuman, you're a married man. If she gets married there's a very strong likelihood she is going to have children." That ended the discussion of hiring women lawyers at Morrison until the early '60s, when we started changing things around. It was just too soon.

I had the same experience at Andover. I was a trustee of Andover in the year 1964. Andover is a boarding school in Massachusetts. It's a very old, very respected school. At a board meeting one day, I said--I had been spurred on by my deceased first wife, but it was also my view--I said: "We've got a girl's school just down the street from us, a very old school: Abbott Academy. Don't you think it would be a good idea to be thinking about starting a co-educational institution here?" President [George] Bush was a trustee at the same time. I'll say that Bush didn't open his mouth on this one, I'll tell you that.

The chairman kind of looked at me and he said: "John, I think that's premature." Well, of course today, Andover has merged with Abbott and it's a fully flourishing co-educational school. Sometimes you bring these things up too early and they don't take, but they take later. And that's what happened there, and that's what happened in my experience with Mr. Shuman. I'm never going to be a great one, because I'm always bringing things up too soon. So there you go.

Hicke: Well, I think dropping a little pebble in the water there certainly didn't hurt anything.

Austin: Well, I guess not, but it was some years before Andover or any of the boarding schools became co-educational. Or the colleges, for that matter. When I went to Harvard, the Radcliffe [College] girls would have a 9:00 in Hollis Hall and they'd go out one end of the building and we'd go in the front end at 10:00.

Hicke: By direction?

Austin: Yes, they were told to go out that way. And we were told to go in the front door. It wasn't until I was a senior in Harvard that I realized the enormous possibilities of Radcliffe in terms of very attractive girls. Here I'd been spending my life going to

Poughkeepsie to Vassar [College], to North Hampton to Smith [College], wasting all this gasoline and time, and here all I had was a ten-minute walk up to Radcliffe and just the greatest bunch of girls you ever saw. Harvard people were very dense about those things. At least I was. Anyway, back to Morrison.

Interviewing and Hiring

Hicke: Okay. Well let me ask you a little bit more about your time as hiring partner. What did you see as the standards for hiring a MoFo lawyer?

Austin: Well, I had the idea that I'd seen in New York, where it seemed to me the hiring was quite a bit advanced over what it was in San Francisco. True, the New York firms up until maybe the late '40s didn't go to the law schools, but they interviewed widely. I mean, people came to them from widely different schools and they took them. For instance, one of my best buddies at Milbank when I was working there had been the editor in chief of the Minnesota Law review. He came from Duluth, Minnesota, and I don't think he'd ever been out of Minnesota to speak of until he came to New York to practice law. So the New York firms were ahead, and I'd been exposed to that system.

Hicke: In San Francisco, it was mostly Cal and Stanford and Harvard and Yale?

Austin: It was just whoever came in the door. Since nobody knew us, nobody came in the door. So it would be the local schools. Although, in the case of Morrison, we had a strong presence in Michigan, because Mr. Clark had gone to Michigan, and he recruited from Michigan at least three other partners. He recruited Dick Archer from Michigan. So that was the one conspicuous exception. Mr. Clark, as you gather as we go along, was really the forward-thinking person, if there was any such person, in the old firm. Much more so than the other fellows, who were sort of status quo and "let things go the way they are."

Hicke: How did we get Mr. Clark here?

Austin: Well, that's back in the mists of time. He had gained some reputation--and I forget whether he was on the government side or the defense side--in the Doheny trial in the Teapot Dome scandals. That's how I think he got known to Mr. Morrison and how he happened to come on here.

But anyway, back to the interviewing, I take no credit for what actually happened, because my good friend Frank Newman, who later became dean of the [Boalt Hall] Law School and on the [California] Supreme Court, and is a long-time professor at Cal, called me up one day and he said: "John, you're just missing a bet." And I said: "How's that?" He knew that I'd gotten into the hiring business and, mind you I hadn't thought of this, but he had the revolutionary idea that I ought to go over to Boalt, not ask people to come to San Francisco.

He said: "There are two absolutely top-flight candidates whom Cravath, which is a famous New York firm, is romancing like mad." The number one and two people in this class at Boalt were Bill Miller and Bob Raven. Miller was pretty much committed to going to New York--there wasn't any point in working on him--but Frank said that Raven was a good prospect, and so I went over there.

Here's Bob in a nice, blue serge suit. Nice-looking guy. Number Two in his class, pleasant personality, and so I started trying to romance him on coming to Morrison. Well, he came over. I don't think we even paid his bus fare to come to San Francisco, and I think of all these people we ship out here on airplanes now. Anyway, he came over and he just went over like a winner. He was my first hire.

Hicke: Your first one?

Austin: Yes, of any significance. I should have quit right there because . . . Well, I won't say that, because I hired Dave Nelson. Mr. Clark hired Marshall.

Hicke: Oh, did he?

Austin: Yes, but I hired Raven.

Hicke: Well, how did you persuade Bob?

Austin: I don't know. When you interview him, ask him what caused him to come to Morrison. I can't imagine why he picked us, except maybe he wanted to be in California. And, as I say, nobody else came over to interview him. I did, because this guy in the law school had told me I was a dummy not to. So that started us back on the track a little bit, but we were very, very lucky.

You wonder about how the firm, when it was not doing so well, why it got such good people. For some reason, the professors at Boalt had a very high regard for our people, and I'm talking now

about Archer and Raven, you know, people like that. They would tell their students this. For instance, I'm sure that we got Dave Nelson (you'll probably interview him) because Dick Jennings, who is the corporate professor, sung the praises of Morrison to him.

Hicke: How did you get to know Frank Newman?

Austin: When my wife and I came out in 1946, we didn't know anybody except my wife knew a girl who had married a local boy and my wife went to Bennington with this girl. It's interesting that most of the close friends that I have today, with very few exceptions, I met through this couple.

Hicke: And who was that?

Austin: That was Kate and Dyke Brown. Dyke started the Athenean School and he was a lawyer and he worked for the Ford Foundation. He'd done a lot of different things. I met Frank and Frannie Newman through Dyke. And at one time when we were very young lawyers, Judge [William H.] Orrick, of the federal district court out here, and I and Frank and Dyke--the four of us--used to eat lunch and wonder how you became a partner and how do you get business, and all those great wonderful subjects that young people are concerned about.

Hicke: Well, what were you looking for when you were out recruiting and hiring?

Austin: Well, I was looking for Ravens. [Chuckles] I was looking for people that had absolutely impeccable credentials. As I told you earlier, I slipped in the side door, but I think I have a legitimate alibi in the fact that I was very ill that first year in law school. It took me a long time to get my energy back.

Hicke: So you're talking about academic credentials?

Austin: Yes, that would be number one, and then the personality and just the feel, the character. what kind of a person is this person? Is it a person who can be sympathetic to clients? Tough with clients? See the issues? Get along well with people in the firm? Not be competitive within the firm? You know, those are the qualities that make great partners. And that's what you look for.

Hicke: What kinds of things would you ask them when you were talking to them?

Austin: Everything under the sun. What their interests were, what they liked, what they hoped to get out of it, why would they want to come to place like Morrison, that sort of thing.

Hicke: Was San Francisco an attraction back East?

Austin: Somewhat. The financial disparity between San Francisco and New York at that time--well, it's still substantial--was enormous. Just enormous. I can remember when I was a young partner talking with a good friend of mine who was a partner in Cahill Gordon. I asked him what his take was, and he was making \$38,000. I asked him what the senior partner, Cahill was making. He said ten times what he was making: \$380,000. I thought to myself at the time that Mr. Clark was making \$50,000, and I was making \$13,000 or \$14,000.

Now it's true that in the big firms today, the reports are that the average remuneration is one million for the partners. And the average for the partners in the better firms in San Francisco would be, oh maybe somewhere between \$300,000 and \$400,000. That's according to the American Lawyer.

I don't have any inside information, but you can see, there is a big difference between three times and ten times. So, there were some people who saw the opportunities out here and wanted to get in on the ground floor and go up with it, but not too many of us.

Hicke: Well, that's why I wondered if the climate, or the City, or something else provided an offsetting attraction.

Austin: I think people became much more articulate about that later on when there was a good deal of discussion about what an attractive place it was to live and work in. And the quality of the work was just as good as it was in New York. As far as that's concerned, Messrs. Foerster, Holloway, and Clark were just as good lawyers as anybody I ever saw in New York, and I saw all the best lawyers in New York, because they were all in the same building with us. I used to ride up in the elevator with Mr. Cravath, Mr. Davis, and Mr. Milbank. These other fellows could hold their heads up with those fellows any day in the week.

So anyway, it was always my theory that the recruiting should be done by the younger people. I don't know whether that was a sound theory or not, because a lot of firms send their senior people out. But anyway, it was the system that we followed.

After I was the hiring partner, I think maybe Dick did it for a while and then I know Bob Raven did it and Dave Nelson did it. But by that time after Bob, it was a committee operation and there was a chairman of the committee. That's what Dave was. And I think Mel Goldman was chairman of the Personnel Committee. It became a committee operation rather than a single person.

Hicke: Did you actually hire somebody from the Eastern schools?

Austin: Yes we did. We got a transfer. Mr. Clark was responsible for this. As I say, he was the one with the Eastern contacts. There was a boy named Girvan Peck, and Girvan was working for Debevoise, Plimpton, Lyons & Gates. His wife was one of the daughters of Mr. Green of McCutchen, Olney, Manon & Green and like a good many California girls, she got very homesick and wanted to come home. I guess Girvan figured what the hell, he'd just as soon practice out here as there. So he came out here and left his job in Debevoise, Plimpton.

Girvan's style would have suited so well in Debevoise. He would have been a real smash hit there. But anyway, he came out here, and he was one of the fellows we got from the East. Mr. Clark got Dick Archer from Michigan. We had Bob, of course, but he was local. And if you go down the list, you'll see people starting to come from Harvard and Yale and places like that.

Hicke: So your efforts paid off eventually.

Austin: Well, the firm's efforts paid off. Yes.

Hicke: Frank Latcham--where did he come from?

Austin: Frank was teaching, as I remember, up in Washington. I think it was the University of Washington. He'd had some Middle West experience and he came from there.

Hicke: Marshall?

Austin: Well, Marshall was Stanford. He was the first in his class at Stanford, or damn close to it. He and [Justice William] Rehnquist were classmates, and both were on the law review together.

Hicke: And he was the firm's first Jewish attorney?

Austin: Yes.

Hicke: Was there a discussion about that?

Austin: No. Mr. Clark just came to the meeting one day and said, "I've just hired a boy named Marshall Small, who is high up in the Stanford Law Review," and everybody said "hurray" and that was it. Having watched this process for fifty years, I know that things reach a certain point, and there's always somebody who steps forward. Mr. Clark was very opinionated about a great many things, but he admired excellence above everything else, and he never let prejudice get in the way of his feeling about excellence.

But what changed his mind beats me, because there were some other people whose names I'm not going to mention, very well known people in San Francisco, who almost in the Nazi sense had some Jewish blood, some of whom tried to get in Morrison earlier on and didn't get in. It's just amazing. You would think as you see something like that, you'd be curious and ask the question but when you're under tremendous pressure yourself and you're busy and have four young kids at home, a lot of time you just don't stop and reflect.

I can't for the life of me remember any discussion about Marshall not joining the firm because he was Jewish. In fact, I don't think the subject was ever discussed, and yet I know the firm had a very strong, anti-Jewish prejudice when I came to it in 1946. So, I don't know. I can't answer why Mr. Clark, who was the leader in '46, would do something in 1954 when Marshall came that maybe he wouldn't have done before. I don't know. I can't answer that question.

Hicke: Okay. And Tom Lee?

Austin: Well, before Tom was Bob Nagel. When we were picking off these top people at Boalt, it really went in this progression: Raven, Nagel, Nelson. Nelson was 1960, Bob Nagel was probably about 1957 and Bob Raven would be maybe 1952, something like that. Well, I can tell you exactly what it was. It was very close to 1952. Yes, Bob came with the firm on June 1, 1952.

Hicke: It sounds like you had a successful stint as hiring partner.

Austin: Well no, I told you the young people did it. By, say, the end of the '50s, Dick [Archer] became the hiring partner and then Bob [Raven]. And, although Jennings would call me and I romanced these fellows, so did Raven and so did Archer. It was a joint effort. But that gets back to one of the things that the three of us all felt: that if somehow we could scrape together enough money to hire good people, the practice would take care of itself, provided we had good procedures. We'd get the business if we had

the people and the institution in place. And that's, of course, ultimately what happened. But you have to keep emphasizing the quality of the people.

That's why I always used to say that old bromide, which is very true and I still say it, that the last person hired, professional or nonprofessional, should be the firm's greatest asset, because if you always think of that last person you hire as being the most important thing you're doing, why you're going to get a good group of people. I was riding up in the elevator a couple of days ago with a woman--I don't even know what she does here. I don't know how we got talking in the elevator, but it turned out she'd been at Heller [Ehrman, White & McAuliffe]. And I asked her, "Well, Heller is a fine firm. How'd you happen to come over here?" And she said: "Heller is a fine firm, but you can't imagine the difference in the way the nonlegal personnel are treated in Morrison as compared with Heller." That's what she said. And, of course, that gets us on to Carl Leonard and modern leaders of the firm, who have really set a terrific tone vis-a-vis particularly the nonlegal help.

Hicke: Yes, clearly the support of the rest of the people in the firm is important.

Austin: Oh boy, it's tremendous. I think as you walk around here, you get the idea it's a pretty happy ship.

Hicke: I can tell.

Austin: There's a lot of griping, but that's just indigenous to the soil. Basically this is a very well-run place. Since I'm not doing it, I can comment freely.

Carpeting to Replace the Linoleum

Hicke: Well, I think we've almost done enough for today, but let me ask you, does the story of the new carpeting to replace the linoleum come in here, or is this later?

Austin: Oh, no, that should have come in when we were in the old Crocker building. This Emmett Solomon I was telling you about, who became more and more important in the Crocker affairs, came over to see Mr. Shuman one time, and he was just aghast at this crummy, linoleum-floored anteroom that we had in the old Crocker building.

I was in with Mr. Shuman. Emmett said, "God damn it, Frank, what kind of a flea-bag outfit are you people running?" I'm looking around thinking, Mr. Solomon, what's going on here?

Shortly after that, when Judge heard that story, why, he exploded. He had wanted to have a decent carpet in the anteroom for a long time. So he took this crummy linoleum out and got a decent rug in there. That's the story of the linoleum, and that would have occurred in the early '50s somewhere.

Reappearance of Crocker Bank

Hicke: Well, one thing that we didn't really talk about much was the sort of disappearance and reappearance of Crocker. Does that fit in here?

Austin: Well, I gave you the disappearance. The disappearance was 1956. If you want the story connected, in 1963 Emmett Solomon was starting on an objective of acquiring the Citizen's Bank in Southern California. At this time, we were on a small retainer to the bank, but we weren't doing anything very significant.

One day he called me up - mind you, we were still on the outside - and he said "John, I need some help. I want you to go back to the Justice Department and talk to Bill Orrick," because he knew that I knew Bill and Bill was then the Assistant Attorney General, Antitrust. He was head of the Antitrust Division.

I said to Emmett: "You need a team; you need a litigator. Dick Archer is your man." Well, Dick was a fairly young person. He had tried one big antitrust case for Union Carbide of a national significance. So Emmett said: "Well, he's pretty young, isn't he?" And I said: "Well, why don't you meet him?"

We went up to the Pacific Union Club one day and sat around with Dick and had a couple of drinks and then went in and had lunch. Emmett was very favorably impressed with Dick, so Dick became the head man.

Now Emmett's reason for getting us in to the case exploded, because Bill Orrick recused himself from the case--his reason for doing so because he had been a director of the United California Bank and he didn't want any question that his decision might be tinged by trying to help United keep a competitor out of Southern

California. So the irony of the thing was that we got into this case for all the wrong reasons.

Of course Dick did an absolutely superb job. Up until that time, the Justice Department had been winning all these bank merger cases, and they thought they had a can of corn in this one. Dick took them to the cleaners, and Judge [Alfonso J.] Zirpoli wrote an opinion that was so decisive and covered so many points--this was four or five years later--that there was no way the Justice Department was going to appeal that case. And, of course, Emmett was just euphoric that Dick had done such a good job. I'm shortening it, because this was three or four years down the pike.

It started in June or July of 1963 when Dick and I spent the summer in Washington trying to negotiate a deal with the Justice Department, and we could not do it. They ultimately decided to sue, and then Dick started the case. I wasn't involved in that part of it, because it was litigation. He and his team successfully won the case.

But that fall, Fred Fisk, who had been the senior partner at Chickering & Gregory died. He was handling the Crocker-Anglo Bank (as it was then) business. Anglo was a much bigger bank, and they took over the whole bag of potatoes, you might say. Emmett called me up one day, and he said: "John, I want your firm to represent the bank now that Fred is dead. I don't want you making the mistake that Fred made. I don't want you to do everything yourself."

I said "Well, Emmett, you know me well enough to know that's not the way I operate." So that was the beginning of our presence in the Crocker Bank. And as I say, we got in on the antitrust case for all the wrong reasons. We got into the business side of the bank simply because Fred Fisk had never had anybody with him. So when he died, there wasn't anybody at Chickering to take the business over.

Hicke: Another win for the pass-down theory?

Austin: That's a very good illustration, yes.

Yuba Consolidated Industries

Hicke: Well, do you feel like two more things?

Austin: Sure, I've got plenty of time.

Hicke: Okay. You mentioned Yuba?

Austin: Oh, Yuba Consolidated Industries. That was a client that we had gotten to know through Blyth & Company, because I represented Blyth in an underwriting of some Yuba stock--you know, typical underwriting. And then things got a little complicated. Somebody came up with a neat tax idea that would save Yuba all kinds of money, and a fellow named John McGarragh became the president of Yuba.

Blyth was engineering all this. Jack Beckett--the fellow I was talking to you about; he was still with Blyth in 1959 and he and I both went on the board of Yuba. Then McGarragh, with all this money that he was getting from the gold that they were dredging, and this great tax deal that he had going, started buying companies like mad. He bought Pacific Foundry over here, which is a first-class dog, and he bought some other things.

It finally got to the point where I told him "I've got to jump ship as a director. This isn't my way of doing business. I realize you probably want to get new lawyers." I'd discussed it with my partners, and they were all great; they said "Gee, John if you don't want to do it, don't do it." So that's what I told him.

He turned around and said no, he wanted the firm to continue. So we continued as lawyers, but I got off the board, and that's when I had my fill of being a director and a lawyer.

Hicke: That was the experience you've told me about?

Austin: That was the experience, yes. But we did a lot of work for them, and we also followed them into bankruptcy and did a lot of work on the bankruptcy; so they were a very substantial client for quite a while. Then they just kind of quietly slid into the sea and that was it.

Hicke: How did you generalize from this one experience as a director to the point where you decided against ever going on a corporate board?

Austin: Well, I'd been feeling very uneasy about it, because this was not my only experience as a director. I was the director of MJM&M and some other companies--I forget their names. But it was kind of a cumulative thing, and this just set it off. As I say, it's important to realize that many far better known lawyers than I are directors of companies they represent and very happy to be that. They think it's a way to hold the client, they think it's good for the client, and all sorts of things. I just don't happen to have that view.

Hicke: Okay. One last question. In the 1950s, at some point, the firm established four different departments: business, labor, tax and litigation.

Austin: I would have to guess that it was de facto for quite a while, and then it became de juris, because Mr. de Fremery and Riki [Musto] did the tax work exclusively. Fitzgerald and McCrystle did the probate work and will-writing and that stuff exclusively. And by this time we had enough litigators, so that people like Judge Holloway, who had litigated, no longer litigated, and Mr. Clark had his team of litigators, Dick Archer and Bob Raven and people like that. I can be absolutely wrong on this, because I really don't remember, but I just have a feeling we kind of drifted into it because that's the way the thing developed. Ask Bob about that. Be sure and make a note to ask him about that.

Hicke: Well, you just reminded me of one more question. When you were hiring, were you looking for people as litigators, or were people looking to you for work as litigators?

Austin: In those days we would hire a person generally. We wouldn't hire them as a litigator or a business or a tax lawyer. We'd just hire a person and then we'd site him wherever seemed appropriate to the person and to us.

Hicke: Okay. I can ask Bob about this too, but when he came, he was hired generally and then got interested in litigation?

Austin: Well, Mr. Clark I think snapped him up, and since Mr. Clark was, in my view, the senior partner even though he was equal in percentage to those other three fellows, why I think he just grabbed him. And Bob was very happy. He has always preferred litigation, just as I've always preferred business.

Hicke: Okay, well I think that's enough for today. Thank you very much.

Austin: All right.

The Changing Law Practice

[Interview 4: June 13, 1990]##

Hicke: Last time we were discussing the '50s, and you said you had one more thing

Austin: The thing I would like to emphasize is that the difficulties which the firm overcame in the '60s and '70s, in my view, were occasioned by the fact that in the '50s we didn't perceive the change in law practice which was occurring--mainly that client loyalty was sort of on the way out because of the very rapid growth of inside counsel. As a result of that, the practice became much more boutique; people came to you for a particular purpose and that was it. It changed your client mix. What I want to emphasize is that we picked that up just in time, and I think the firms that went under in this city and that are experiencing difficulties today just didn't pick that up as clearly as some of the other people that did. I think that just absolutely crucial to the later success of the firm was the recognition of this fact and the change in emphasis on client mix and that whole business.

Hicke: Is it possible to elaborate on that just a little bit? Who picked it up and started the ball rolling, and what was the response?

Austin: You know, you can't point to any one person; it was just whoever the movers and shakers were in Morrison in the '60s picked this up. As I've described earlier, they decided to go after good people, and they did so at the expense of the immediate profits of the firm. Later on, as you'll see, in the '60s and '70s, they were willing to put a lot of money into modernizing the equipment that we have. That cut into profits, and it's not surprising that Morrison didn't become the profitable firm it is until all these other things had been put to bed. That was just a comment on the '50s.

Hicke: I have a couple more things that came up in the '50s that I found just having to do with office routine. Here's a memo that I found from '59 with regard to time notes, which is probably always a painful subject. [He is reading the memo.]

Austin: This is so great!

Hicke: That's a 1959 memo from Mr. Clark asking people to keep careful time notes.

August 10, 1959

MEMORANDUM TO ALL LAWYERS:

In re Time Notes

I have been having considerable trouble recently with the time notes which I have had occasion to use for billing purposes. For example, I have been unable to tell from the time notes whether or not, when I knew that some day or days had been devoted to court work in a particular matter, any court work had been actually done. When these notes are compiled by the time clerk they should designate either the number of days spent in court (that is to say, the number of hours in each day) or have underscored in red on them each court day or part thereof spent. The same is true of depositions.

I have been wondering whether or not instructions have been given (some associates have told me that none have been given) about time notes. I shall outline what our practice is and should be.

There are five categories into which all services rendered by this firm can be placed. They are -

1. "L&T", meaning letters and telegrams, and enough substance should be stated in each instance to enable one who reads the time note to understand the subject matter of the letter or telegram and to whom written. Of course, it should be stated in each instance.

2. "Conf." indicates conferences. Under this category the names of the persons conferring should be stated, sufficient

of the subject discussed to enable it to be identified, and the time devoted to the conference.

3. "A&R" - this means authority and research work, which should be identified by subject and the time stated as above indicated.

4. "Doc." - this means documents, and ~~should~~ report each document or draft of document prepared, with proper identification, together with the time involved.

5. "Co." or "Ct." - indicates court work, and there should be entered under it time spent in court and on what matter.

The time clerk has fallen into the habit of referring to conference as "Co." The proper designation is "Conf." Court is "Co." or "Ct."

I have had occasion to see in the time notes the entry, numerous times, of the mere work "research," followed by so many hours. That is wholly unacceptable so far as I am concerned.

I have also seen many times in the time notes the entry "conference" without any indication of who had the conference or to what it related. That kind of an entry is rather meaningless.

I have noticed also rather frequent entries of stenographic overtime charges. A note of caution here is indicated. No overtime should be incurred unless in case of emergency or a deadline which cannot otherwise be met. If ever it is believed to be necessary, the partner for whom the work is being done should be consulted in advance of incurring it.

HERBERT W. CLARK

HWC:RF

November 18, 1960

MEMORANDUM FOR ALL LAWYERS

The problem of having the office boys bring in lunches has become serious. For instance, today the boys made eight separate trips to obtain lunches between 12 and 1 o'clock.

Hereafter, if you desire lunch brought in place your order before 12:15 so that all lunches can be obtained at the same time.

WM. L. HOLLOWAY

Austin: That is absolutely mint Mr. Clark. It just typifies what he would say.

Hicke: Does anything come to mind about keeping time notes?

Austin: Not particularly. Mr. Clark from time to time put out memoranda on a variety of subjects and I'm not saying that what he said there wasn't purposeful, but I don't think, unfortunately, that the whole office stopped dead in its tracks and began following this pattern; it didn't work that way. He was inclined to write memos of this kind, and they make good sense, but that doesn't mean they are necessarily followed.

Hicke: I also have a couple from Judge Holloway. This is even better; it refers to the fact that the office boys were being sent out too often to bring lunches in. These are just some things that I thought would be fun to look back on.

Austin: This is, of course, Judge Holloway speaking in his capacity as the managing partner of the firm. This one would be taken very seriously by people and there was no question that they used to send office boys out for cigars or something like that. You couldn't get an office boy around here not to give you any personal service. In those days they were considered fair game for personal services of one sort or another, and then when things got aggravated--as this memorandum indicates--why then Judge Holloway puts this out saying that if you want to order lunch, you'd better place your order before 12:15.

Hicke: I thought this indicated a couple of things: it's dated 1960, which seems like it might have been a time when they were trying to make things a little more efficient.

Austin: I think 1960 was before Roland Foerster died, before we lost Food Machinery. However, 1960 was when Honolulu Oil Corporation, one of our major clients, was in the process of dissolution. That was a very traumatic experience for Judge Holloway.

Hicke: It also indicates the difference in the way things are done just in general. Now, if lunches are needed, there is a staff that takes care of that.

Austin: Of course all decisions respecting anything regarding the firm were made through Judge Holloway. We didn't have an office manager who made decision or a fiscal officer who made decisions. Remember in 1960 you're talking about a firm of approximately twenty-two lawyers. Just the same size as it was when I came with the firm, in about 1946. Naturally it was very paternalistic. I

mean the Judge did everything. He made all these decisions. He hired people. That was the way you ran a small law office. You couldn't do it today.

Hicke: Here's one more detail which I think is rather interesting historically, and that is that it was the beginning of the changes in hours and the Saturday closing. First of all, apparently the wage stabilization board attempted to regulate the hours during the Korean war?

Austin: I'd forgotten that.

Hicke: The memo says that the firm has permission for hours to be from 9:00 to 5:00.

Austin: When you get to talk to Jim Paras, you might ask him about that. Now, he wasn't with us in 1951, but he might remember something about wage stabilization that I don't. That wasn't my bag. But I do remember the Saturday closing, and the reason for that was this was the time when the bank started closing on Saturday; we did too.

The rationale behind that would go as follows: it was felt absolutely essential that the bank have legal counsel at all times when the bank was open. Ergo, if the bank was open, we were open, and when the bank closed, we closed. Our other clients were all closing on Saturday by 1951. They were officially running on a five-day week. Of course, people did work on Saturday.

Now the banks have opened up on Saturdays again, but because of the change in our relationship with our banking clients, we don't general speaking have anything to do with worrying about emergency problems that happen on Saturday; mostly the kinds of questions they now ask us can wait until Monday. So we are officially closed on Saturday, but you'll find a fair number of people here on Saturday and even Sunday.

1958 Firm Members

Hicke: One more thing I found: this is a 1958 listing [of firm attorneys], probably coming from Martindale-Hubbell, or some listing of firms, and I wondered if there is anybody on there that we really haven't talked about much that we should have. Maybe we'll get to some of them later?

Austin: Well, we certainly talked about Mr. Clark, we talked about Mr. Shuman, and Mr. Foerster. I mentioned Forrest Cobb briefly; he ran the San Diego office. I've told you what a marvelous human being and lawyer Holloway was. I told you Fitzgerald was a probate lawyer really, and Clinton was a labor lawyer. I mentioned that Francis Hutchens was a son-in-law of Mr. Shuman was a very bright fellow, but never could make his mind up on anything.

Coolidge Kries, I mentioned him, Jack McCrystle was in the probate end. He came with the firm before I did, but he and I made partner in the same year. We'll have a great deal to say about Dick Archer when we get to talking about the '60s. He was a very strong and positive influence on this firm. It was great personal distress to me when he left.

Bobby Homans: I think I mentioned his stresses. He was a partner who committed suicide in 1969, I think it was. Of course Bob Raven--we'll have a great deal to say about him. The rest of these people who were associates: some of them are present partners and some aren't. You should get Bob to tell you how he got Mel Goldman, one of the strongest partners today.

VI NEW DIRECTIONS: THE 1960s

The Schroeders Meetings and Why

- Hicke: Okay, well that does then bring us up to the '60s, and you've shown me a little bit about the background to what happened then.
- Austin: Well, what happened in the early '60s was that Mr. Shuman died in March of 1961, Mr. Foerster died in June of 1961, and Mr. Clark died in 1964, but Mr. Clark had become ill and as far as having a positive influence on the firm was concerned, I would say that the former senior partners, either by death or physical condition, ceased to exercise any dominating influence in the firm by 1961.
- Hicke: Mr. Hohfeld died in '66, but he had been long retired . . .
- Austin: He hadn't had anything to do with the firm since 1946. So it was about this time that Messrs. Austin, Archer, and Raven began to get really concerned about matters and we had some meetings and . . .
- Hicke: Were they in fact at Schroeders [Restaurant]?
- Austin: Well, we did have a couple of lunches at Schroeders, yes. Bob Raven can remember only one. It's good to think of it as the Schroeders meetings.
- Hicke: Can you tell me what the stimulus of the meetings was?
- Austin: The feeling was that we were afraid we were going down the chute. Things were drifting. As I've already said, Judge Holloway was just one of the finest people and one of the greatest lawyers, but neither he nor Hart Clinton stood up to these problems and did anything about them. I hope that remark will . . . well, Judge is dead and I guess it's okay as far as Hart is concerned; he knows my views.

In any event, that was the fact: that we had these three people die; in 1960, we had lost Honolulu Oil through dissolution; in 1961 or immediately after Roland Foerster's death, we lost Food Machinery.

We used to think that we lost Food Machinery because Mr. Davies had had his son go to Pillsbury, Madison & Sutro, but in my judgment, we had the cart before the horse. Mr. Davies sent his son to Pillsbury, Madison & Sutro because he saw them as the modern progressive firm, and he thought it was a much better place for his son to start than here. At least that's my thirty-five-to-forty-years-after-the-fact evaluation of this. It was a very keen blow when we lost Food Machinery, and it really devastated Judge Holloway. It just kind of knocked the stuffings out of the situation. Here we'd lost that client, we had dissolved Spreckels by then, so they were gone. We'd gotten back some of the sugar business, but the big conglomerate was gone--Food Machinery was gone--Honolulu was gone. For Crocker, we were on a very modest retainer; we were no longer doing a lot of work for them. These were hard times.

I think it's fair to say that Dick Archer, when we had these discussions, in my judgment, was the most articulate of the three of us as to what needed to be done. Among other things he thought we should have committees that examined these various problems, and we did. I can't remember when he became the managing partner, when Judge gave it up and he took it over, and I may be way off base in thinking it was in the early '60s, but you can check that. But the fact of the matter is that much of the concrete planning that went on at the so-called Schroeder meetings, if you will, we evolved afterwards through discussion with Bob Raven, Dick and me.

Hicke: Did he actually draw up proposals in writing and . . .

Austin: Well, there wasn't so much in writing; I can't remember whether he had any memoranda for the rest of the firm or not. I remember the three of us went to the firm and said that we thought the only way to go was to get good people--that was our first thing--and go out and actively recruit, and it would cost money and expand the firm. There were a lot of people in the firm who felt that if we tried to do that, it would just cost us money and cut into our partnership profits. They didn't see that the firm couldn't continue in the size that it was for the practice they wanted to have. It was that simple. We persuaded them, and that's what we did: so we went out and started looking for people.

Hicke: So your approach was really to find the right people first?

Austin: We knew we couldn't do the kind of work we wanted to do with twenty-two lawyers. That's why there was no question in my mind. By that time Pillsbury was to forty-five or fifty, and no wonder Paul Davies would look askance at twenty-two lawyers at Morrison. With Roland Foerster dead, who else did he know in Morrison? He knew Judge Holloway and he knew me.

Hicke: There was also the beginning of specialization.

Austin: That's right; you couldn't handle it with that many people. So that was the first big push in the '60s.

Litigation

Austin: We haven't said anything to date about litigation, and I think it's appropriate now to kind of fire and fall back a little. Mr. Clark had a reputation as an antitrust lawyer, and very fortunately for us, he was handling a big case for Union Carbide in the '50s. When he became sick, Dick Archer, at a very young age, had to take over the trial of that case. He did a beautiful job, and ultimately got the case straightened out to the satisfaction of the client.

Hicke: This was an antitrust proceeding?

Austin: Yes, and that case sprung Dick into the forefront in public perception as a big antitrust lawyer at a very early age. He never would have gotten that if it hadn't been for Mr. Clark getting sick. Mr. Clark obviously would have tried the case himself, and Mr. Clark had the reputation to start with. So that was a big push for Dick Archer in litigation. For Bob Raven, well, I guess when he first came with the firm we had this case in which we were representing a plaintiff in the movie industry. The plaintiff was the Embassy Theater. Sort of a little rag-tag house up the street here on Market. They were seeking a better position in getting new movies. In those days the distributors would give the first sixty days to the best house and the next thirty to another that they thought was probably the second and third and fourth and fifth. Embassy kept claiming that they were entitled to a better position in getting pictures.

Hicke: They were suing Paramount?

Austin: They were suing the distributors, not the producers.

Hicke: Was Eugene Bennett on the opposing side, or do you remember?

Austin: I don't recall that Bennett was on the opposite side. I can't remember who the lawyers were. When you talk to Raven, he'll tell you all about the case, but because he's modest, I want to tell you a few things about this case.

Hicke: I just know that there was a whole series of cases starting in the '30s and going up through the '50s with the movie industry, and its hard to track all of them.

Austin: This was a case that Mr. Clark had lost interest in; it was kind of kicking around the office. So they put Bob on it. For instance, he had to take some depositions. He got into the case, and that's one of the first things you do in a lawsuit. He'd never even been to a deposition, and the firm just let him go and handle the depositions. He ended up trying this case at a very, very young age. He'd had very little trial experience.

But he's just a born trial litigator. He did a wonderful job on it, and we were told by the judge's clerk later that the first judge that heard this case would have given us a million or \$1.5 million--something like that--verdict, which trebled would have meant three times that and we had this case on a contingency. We were not paid that, but we would have made a huge sum of money on this case.

The judge died, and the case was reheard as to certain aspects by another judge, who was much more conservative, and he only gave an actual damage judgment of \$750,000 which trebled was two million of which I guess we got a third, let's say \$700,000. We recouped a great many of our expenses, but it was a tremendous disappointment to have this first judge die on us in this crucial time, when he should have issued his opinion. He hadn't gotten around to it. So for that reason, we had to go back to the other one.

But anyway, the extraordinary thing was that here Bob, with no training and no previous experience, went in and he learned to be a litigator on the Embassy case. Nobody taught him anything. Mr. Clark wasn't paying much attention to it. If you can imagine somebody in this firm today being given a big case like that, it just shows you how interesting the practice was at Morrison in the '50s.

So you had these two fellows, Archer and Raven, who received quite a bit of recognition as a result of those two cases and who became a very strong litigation team. There was nothing inter-

competitive about those two. If we could have kept Archer, we'd have had the strongest litigation team in town. We ultimately did, but it took a while longer than it would have if we'd kept Archer. It would be a great mistake in talking about Morrison's history not to talk about the litigation, just to dwell on the business side. In the total history of Morrison, the development of those two guys in the '50s was really something else.

The rest of us kind of came up gradually, if you will. For instance I had Judge and Mr. Foerster, and by the late '50s I was cut loose doing my own things and getting my own clients. The litigation component that was being built up there was very important to recognize.

Hicke: So obviously they then attracted many more clients?

Austin: Over time they did, but the point was that they had an opportunity to develop a reputation very early. They were known as people who had tried important cases and won. So I think we can say, as we leave the '50s, that probably it's not an exaggeration to say that between 1883 and the end of the 1950s, law was practiced pretty much the same way at Morrison & Foerster. There wasn't much change between those times.

Then, because of the change in the way law is practiced in the U.S., and the way Morrison reorganized itself, things began to change a little bit. One of the things that you will see and I think other people will confirm, is that more and more at Morrison, clients were viewed as firm clients. Mr. Clark had his clients and Mr. Foerster had his clients, Mr. Shuman had his clients, but more and more, for a variety of reasons, some of which I'll get into later, Morrison took the attitude that these were firm clients.

Actually, you know, there's a really firm foundation for that, and it was a sensible thing that we finally got switched around. We asked ourselves, well, who is the best person in the firm to handle that matter?

Hicke: It has to do with specialization?

Austin: Specialization was becoming more and more prominent and had something to do with that, but it also had something to do with the idea that I think I mentioned--getting ahead of my story a little--that the whole firm accepted the firm client concept.

As you see the evolution of practice at Morrison, you see these things starting to really develop a different way, and I

like to pick the '60s as the sort of cut-off point where these things started to germinate. Nothing happened that you can say on May 24, 1962, suddenly the light dawned. It's very hard to pinpoint exactly when, but you can get a pretty good idea of the approximate time these things occurred.

Recruiting

Hicke: Somewhere I got the idea that hiring Tom Lee was a bit of a crucial point, because no one had been hired for a while before that?

Austin: Well, that's part of the story of the '60s. Nobody between him and Dave Nelson who was hired in 1960--Dave Nelson and Roger Findley. Roger, if he had stayed with the firm, would have been like Dave Nelson: he would have been a real winner. But he decided to teach, so he left, later on. After Dave, nobody was hired until 1965, when we hired Tom Lee and John Kelley.

John Kelley didn't have as strong academic credentials as Lee did. Lee was a comment editor of the California Law Review, much sought after all over the country. I think I told you the story about him. In later years when I asked him why he came with us, when we hadn't hired anybody for five years, he said, "Well, I figured you fellows were either going to make it big and I'd be on the top and by osmosis I'd come up like that, or you'd go down the chute pretty fast and because of my record, I would not have any trouble getting a job with another firm. So," he said, "it was kind of a gamble from my point of view," and it certainly was.

Hicke: Who talked to him when he was being considered?

Austin: He was coming into the business group, and I was the most active person trying to get people into the business group then. Judge had sort of turned that sort of stuff over to the rest of us. I romanced the hell out of him trying to get him to come, just as I had with Dave Nelson.

We got Lee in 1965, but in 1964, we lost Nagel, who was one of our bright California people, who I think had just come to the conclusion that Morrison was not going to make it. He never really said that, but that must have been why. He went to work for one of our clients in the in-house department, and he gradually went up. It was the Amstar Sugar Company, and he went up in that company, and at one point, it was quite conceivable

that he might have become the president of the company. But his CEO sponsor died early and another fellow was picked.

So here we are in the '60s, we've got all these deaths, we've got Archer trying to straighten us around. Archer becomes the managing partner, we start vigorously recruiting, we have some luck, we get some pretty good people, and the thing is slowly inching around, getting back on track. You pay a price when you try and take a firm that is that out of control and try to pull it back. You pay a price in terms of what the partners can take out of the firm.

It was somewhere around this time that I suggested that, as to all the younger partners, we would have a two-tier system and that's all. We would not have all this pettifogging about who gets one millimeter more than another person.

Hicke: So everybody fit into one or the other of two categories?

Austin: One or the other of two categories. Now exempted from this were Fitzgerald, Kries, Holloway, Clinton, I guess they were the main ones. But all of the partners from me on down were part of this, and that system prevailed--I forget when we finally broke it, but it prevailed well into the '70s.

Hicke: Was it based on seniority?

Austin: No, it was based on what we thought the person was contributing to the firm.

Hicke: So there were still individual evaluations?

Austin: Yes, there were individual evaluations, but of course the essence of the system was that you'd have a Dick Archer and Bob Raven in Tier One. You'd have X or Y in Tier Two and some of the others in Tier One weren't anywhere near worth what Raven and Archer were. In due course, that tension just exploded; people weren't going to put up with only two tiers.

My reason for suggesting it was that you spend an awful lot of time and attention in trying to work out the percentage points when you're doing it on an individual basis, and it takes a lot of time. It wasn't too tough to be able to throw half the people into one basket and half into the other. You could do that in an afternoon. Whereas if you had to evaluate people more finely, it would take . . . I mean this business goes on in the firm today and it's year-round business.

- Hicke: Let me just throw in another interruption here. You went the route of getting more people into the firm. Of course in those days there was no such thing as going out after clients, but was there something you could do along those lines?
- Austin: There was nothing done in a systematic way, the way it would be today in a marketing sense. It's hard for me to speak on the other people, because I really never thought that one through. I was bringing a reasonable number of clients in ways I have mentioned earlier.
- Hicke: But this was still the old method of word of mouth--people knew your reputation and that's why . . .
- Austin: I never got any clients--except one--that didn't come as a result of work that I'd done for some other client. I brought in a fair amount of business. But as I constantly emphasize to people, that business that I brought in was all in one way or another related to some other firm business which the firm had handled.
- Hicke: So your idea was to do top quality work and the work would come in?
- Austin: Absolutely. It's always been my thesis. That's the way you get business. I have given you some illustrations of that, such as Consolidated Freightways.

Now we're in the '60s; we've got to really start building a client base. As I say, we had a real piece of luck on the litigation side in the '50s: Archer and Raven got known. So they started developing that business.

Archer Takes on the Crocker Bank Case

- Austin: I think I mentioned to you that in the '60s two things happened: in 1963, the Crocker Bank was sued on an antitrust case which I discussed earlier.
- Hicke: Do you know any of the details of the Crocker case?
- Austin: Sure, I know the whole thing, because I worked with Archer on it.
- Hicke: Can we go through that?

Austin: The gist of the complaint was this: that the merger of Citizens Bank into the Crocker Bank would lessen competition in the California banking market. Of course our claim was contrary to that: that the combination of these two banks, which were not in competition with each other and never would have been in competition with each other . . .

Hicke: Because of the geographical . . .?

Austin: Geographical . . . would--not be true today, incidentally--would enhance the ability of this bank to compete with the Bank of America, which was bigger, Security Pacific, which was bigger, all of the life insurance companies like Metropolitan, Equitable--all of the rest of them who were competing in the home mortgage loan market and then the corporate lending institutions. Without going into a long rigmarole about the Crocker-Citizens case, as I say, Archer, over a period of time, won that case. In fact, Emmett called me for that, and I spent all summer and so did Dick in Washington negotiating with the Justice Department trying to get a settlement in this thing.

Hicke: Who were you negotiating with? I think you said Bill Orrick?

Austin: No, he had recused himself. His first assistant--I've even forgotten his name; he was kind of a weak sister in my opinion--but in any event, we negotiated with him, and we were unsuccessful. So they brought the suit, and Archer went to work.

It's just a classic in the business to read and see how Archer strategically set things up and how his mind was so clear, thinking ahead on issues and things like that. This case is a textbook case for a young trial lawyer who wants to see how you win a very complicated kind of case.

In the meantime, of course, Raven was pounding along too. He didn't have as spectacular a case right then, but he was starting to develop his practice also. So we had these two very strong guys in the '60s. And in the business, we still had Judge Holloway to a certain extent, but then the fellows on my team were coming along and they were getting some experience--the Lees, the Nelsons, the Smalls, those people. So we were starting to get going in the '60s.

Mastercharge

Austin: In addition to the Crocker case for litigation in the '60s, we got the credit card business in the '60s. What happened was this: four banks, principally led by Wells Fargo--Wells Fargo was the leading bank--Crocker, United California Bank, and Security Pacific--those four banks had seen that Bank of America was successful in BankAmericard. At that time Bank of America was the only bank that had a card like that, I believe. Certainly the only one in California.

These four banks decided they would like to combine to get a bank credit card going that would compete with BankAmericard. Since Wells was the moving proponent on this, they went to the antitrust experts at Brobeck, namely Moses Lasky, and Lasky told them it would be illegal for them to form this organization.

They weren't very happy about this; so they said, well, who else? My name came to mind, because I knew almost everybody in the banking business in those days, and I'd done a lot of bank work, not only for Crocker, but for other banks because of our California Bankers Association contact. So they came to me.

I of course immediately pulled Dick Archer in, and what does Archer do? He figures out from an antitrust point of view that this was just like a check clearing association, as to which nobody had had any antitrust problem. There have been check clearing houses all over the country for a hundred years. It was his analysis that these banks would continue to compete for customers vigorously, and all that they were combining to do was to form this--in a sense--clearing association.

Hicke: It would just clear the credit card . . . ?

Austin: Advertising and clearing. That would be about it. So we decided the best thing to do actually was Dick's suggestion: we decided that we would get what was then known as a business review letter. We would seek this, in which we would go to the antitrust people and we would give them a modus operandi in how we propose to operate, and then they would give us a letter saying that what we proposed to do was okay.

It took us a little while and a little negotiation; we had to change our plan a little bit here and there. But finally we got the business review letter. In the meantime, I'd been very lucky, because the Bank of America people were really far-thinking people, and I called one of the guys up there and I said, "You

know, we're representing your competitor. Couldn't you give me some help, show me some of the problems that you've seen and gotten rid of, save me the time of having to go all through them?" He said absolutely.

The reason that the top management of the Bank of America gave the legal department a green light for me to talk to them was because they were operating on the theory--which later proved to be true--that if you have one gas station on a corner and three more gas stations come along on the other three corners, the likelihood is you sell more gas than if you were the only gas station on the corner.

Now don't ask me to explain why this is a marketing truism, but that's what the bank figured, and that's exactly what happened to the Bank of America. Once Mastercharge got going, it increased the Bank of America transactions, and they jumped a lot more than it had when it was operating all by itself.

Hicke: Were they also concerned about antitrust implications?

Austin: No, because at that time they were doing it as one bank, so they didn't have any antitrust problems. So what I did was to just set up an association, basically, that was like a check-clearing association. There were obviously a few other problems that we had to work out, and I had to be careful on this antitrust business too.

To make a long story short, we set up some operating rules and bylaws and all that, and they passed muster with the Justice Department, and they passed muster with the banks, and so they got into business. Immediately we were the number one law firm in the United States on multi-bank credit card operations, because we were the only ones who had ever done it. Actually, the New York people were so competitive with each other they had never gotten into this business, and finally we went back to New York and sold them on the idea that they ought to join our organization.

Hicke: Sold who, the other banks?

Austin: Yes, we talked to Citibank and we talked to Chase and you know the big giants in New York.

Hicke: Let me get this straight, Bank of America had Visa.

Austin: At that point, Bank of America had BankAmericard.

Hicke: And this was the formation of MasterCard?

Austin: Mastercharge. Now, later on Bank of America was instrumental in organizing Visa, because they saw it would be to their advantage to have a group of banks, like ours. Ultimately, all the banks became pretty much members of Mastercharge and Visa. As a matter of fact, today, I only have one Mastercharge card and I have several Visa cards, because any bank you go to will offer you either one; they don't care which one you take. You can have both.

My experience in Europe is . . . the reason that I keep a Mastercharge as well as a Visa, and I also take an American Express card, is because I have been places where they will only take American Express, I have been in a very expensive hotel in France where they would only take Mastercharge, and I didn't have my Mastercharge card with me. So, I take three cards when I travel.

Hicke: I think that is true enough.

Austin: But in the United States, Visa is not a bigger institution than Mastercharge, but it's bigger in Europe. So you do get these funny little glitches where you run into a little hotel and they take Mastercharge and they don't take Visa.

The Mid-1960s

Austin: So, as I say, in the '60s, from a practice point of view, the firm got a real shot in the arm from Dick's case of Crocker on the one hand and this Mastercharge thing on the other, and the fact that Emmett Solomon called me in on this antitrust matter because he thought I was so close to the assistant attorney general antitrust.

About that time he had become the chief executive officer of the bank, and he still was using Fred Fisk as his principal lawyer--he came from Chickering and Gregory, and they were big representatives of the Anglo [bank], which I told you about back in the '50s.

Little by little he called me a little more about this, that and the other thing. Then when Fred Fisk died in about December of 1963, immediately Emmett called me and said, "I want you to be our principal outside lawyer." I said, "Sure, happy to." So he started me coming to the board meetings and this and that.

I started meeting with him about . . . I used to go over there almost every morning about 8:00 to see if there was anything on his mind, say hello to him. We had a very close personal relationship.

As far as the practice end of this--we talked about the people end--the practice end had really started to turn in the '60s. It was still grappling. We weren't making much money. We were still on a two-tier system; a lot of people were getting a little itchy about that two-tier system. They felt it created gross inequalities, which it did. There were people at the bottom of the first tier that could touch a candle to some of the others in the first tier.

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Austin: So, 1965--just as a personal note--was a very devastating experience for me, because my beloved first wife died of cancer at forty-five, and I had four kids. She took about seven months to go, and for seven months, this firm really carried me. Guys like Small and Nelson--I don't know how they did it, but they did.

I would go to the hospital every morning, and I would come back in the afternoon for a couple of hours then I'd go back to the hospital. So '65 was really a tough year.

As a matter of fact, Emmett told me later that if my wife had not taken sick in December, he was going to ask me to be the president of Crocker Bank under him as his No. 2 guy. Of course I wouldn't have taken it, because I like practicing law. But it's always very pleasant to be asked.

I can't emphasize enough how those fellows kind of closed ranks and really kind of carried me. I dare say they had to carry me for that time that Joe was sick as well as after, until things got a little more stabilized and I got into my current position with my current wife and things really worked out. But that was a tough time. Go through those things with Small and Nelson because for me that period is a little blurred.

I think we had that beauty contest on Behavioral Research, I think that occurred sometime in the late '60s, but you can check that out for accuracy. What we ended up doing was John Kelley and one of our black lawyers, Grant Rice who became a partner and then became ill and wasn't able to continue being a partner . . .

Hicke: In the '60s?

Austin: No, in the '70s, Grant Rice--he was our first black partner. But anyway, he as an associate worked with John Kelley on this Behavioral Research [account]. This company was doing all sorts of educational programs; it was very interesting. It was a good client; we were doing a heck of a lot of work for them.

Hicke: What kind of work?

Austin: Just legal work: writing contracts, distributor agreements, one thing and another. I'm pretty sure that one came in at that time.

Now of course, another big client that we got in the 1960s which I think I mentioned before, was Memorex. Memorex had proprietary secrets.

Hicke: Which they wanted to use in developing their own business?

Austin: Exactly. Now I'm not going to go into all the ins and outs of it, because it's not necessary for this history, but the fact remained that we certainly could not put Memorex in a position where we went out to raise money for Memorex and then Ampex sues Memorex, seeking an injunction against these fellows forming this company; that would have been a terrible situation. So Dave Nelson, who had recently come with our firm, wrote an exhaustive memorandum on this question about whether this information was proprietary. Helping our position was a line of thinking as follows. A fellow works for Boeing, and then he comes down to Portland, and he works for a high-tech company in Portland, and then he works for another high-tech company and who's to say where and when his information was developed? The courts take the view that people have got to be mobile, that that's a desirable thing in society, and obviously they take ideas with them, and where did they get the first idea? Well anyway, for a combination of reasons we told Memorex to go with it.

Hicke: Can I just ask, were there precedents established?

Austin: There were some, yes, there were some cases on this. But it really involved my talking to the Heller [Ehrman, White & McAuliffe] partner who was in charge of Ampex. In any event, I convinced him, with Dave's memo, that there wasn't any problem here, and they never went after us.

Hicke: So it was individual negotiation?

Austin: Memorex was pretty lucky that Ampex didn't harass them when they were getting started.

Hicke: Did you have to get a written agreement of some type?

Austin: I don't recall whether we had any written agreement or not. Probably there was an exchange of letters. In any event, I felt comfortable. Now we were in the phase that we were gearing up to do two things: first, to raise money publicly. In order to raise money publicly, you have to file a registration statement with the Securities and Exchange Commission in Washington. This is a very tough regulatory body. Because Larry Spitters wanted to do things in a particular way, he got the SEC staff people's nose out of joint, and I had to go back and kind of calm them down and get them squared away to give us the permission to talk to potential investors and have this registration statement become effective, which would permit us to go out and raise money. And that's what we did. I forget how much we raised--a million, two million, something like that. But we did a typical dog-and-pony show. Larry and I went and visited with investment bankers in Chicago and in New York, and out of this an underwriting group was formed which provided the first money.

Hicke: So this was not a public offering?

Austin: It was a public offering: in other words, they sold the stock to their customers. That's how Memorex got started. Of course it had a variety of problems of a start-up company--one thing and another. Once again, just as I think I mentioned on Mastercharge, Roland Brandel had moved in and rapidly took grasp of the situation, and in three or four years, he was Mr. Mastercharge and I was sort of senior citizen. Same thing on Memorex. I got Dave in on Memorex and before you know it, he's doing the Memorex job, doing a fine job.

This is what has always been my view of the way this firm operates: that the older people are always available for judgment, but they should get things started, then get somebody else working on it, and they turn their attention to something else.

Of course, if you're in a pressure cooker, in terms of your position in the firm and your percentage points, and if you're concerned about those things, naturally you tend to hold onto something, because it will give you a few more recognition points. I was always pretty lucky that I never had that feeling, because I was always able to go out and get something else. I thought it was very important to treat the younger people just as Roland Foerster and Judge Holloway had done with me, so that I'd do the same thing.

Management Changes

- Austin: So you can say in the '60s that the litigation people began to get a good push, and the business people got a good push, because we took on two very significant clients in the '60s. There were obviously many others that I'm not doing justice to, but these are the ones that come to my mind because I had something to do with them. I would say that Dick Archer's system of the way the firm should be managed was taking fruit: we had committees, we had a managing partner, we had a Management Committee. The Management Committee met every week.
- Hicke: Decision making?
- Austin: Yes. Actually I guess we were doing all that. I just don't know when Dick became the managing partner and when I became chairman of the Management Committee.
- Hicke: I have the date you did; that was 1971. But I don't have anything about when Dick Archer became managing partner.
- Austin: Well anyway, somewhere in there, Judge Holloway and Hart Clinton sort of just passed the baton.
- Hicke: Was it the same time that you became chairman of the Management Committee?
- Austin: I thought so. But no, I guess not. When Dick became managing partner, Hart Clinton became chairman of the Management Committee, and that date would have been earlier. That sort of persisted in the late '60s. I was chairman of the business department and on the Management Committee.

More Clients

- Hicke: Maybe we can go back, I have a few questions about the '60s. I have a list of the major industries who were clients in the '60s: Asphalt. You can just tell me if you know anything about these.
- Austin: Well that was a big lawsuit.
- Hicke: Chlorine?

Austin: Well, that was probably another lawsuit.

Hicke: Sugar: you said there was a little of that.

Austin: Yes, that was Amstar.

Hicke: Peripheral Computer Equipment, was that Memorex?

Austin: Yes.

Hicke: Airport Car Rentals.

Austin: That's litigation which I believe was handled by Mel Goldman.

Hicke: Corn Products Derivatives.

Austin: I don't know what that could have been; it's probably litigation. It doesn't sound like anything we were doing.

Hicke: Then I have some constitutional law cases, maybe that's litigation too?

Austin: That's litigation too.

The New Crocker Building

Hicke: Well, then, I think we ought to talk about 1966 when the Crocker Building was torn down.

Austin: Well, by that time, thanks to Dick Archer, who was still the managing partner, we had committees, and we were starting to get a little forward planning, so we had decided that we would come back to the new Crocker Building when it was built. We were lucky enough to get space down the street at 120 Montgomery in the Equitable Building during the interim. This was space that one of the big accounting firms had had, and they moved to the then new Hartford Building, and we just took the space over. It was really pretty junky space, but we were there only three years.

Hicke: You were there three years while the new Crocker Building was being built?

Austin: Yes. Then when it was built, we went back.

Hicke: I presume everybody in the bank had to do something similar?

Austin: No, there are two buildings. (He refers to a map.) On this side of the street, the north side of Post, is the bank building. That was called the Crocker Bank Building. And this building here is called Crocker Plaza. That building that you look at up there was the old Crocker Building, which stood on this site here.

As I say, these were forward-looking decisions that were starting to be made in the firm, and the first one was if we got out of the Crocker Building, where would we want to go and where would we want to end up? Crocker was a good enough client, and Crocker Estate was going to have a big ownership. The people who owned Crocker Estate would own the Crocker Building, the new one, and they were good clients of ours. So we thought, well, sure, we'll go back in that building; so we did. For three years we were over in One Twenty Montgomery. As I say, those were all planning decisions that were made by appropriate committees and approved by the partnership. Morrison was starting to operate on a very distinct, forward-planning kind of basis.

Hicke: Did you project how much space you would need?

Austin: Lawyers have never been able to project their space adequately. I think maybe things will slow down a little. I think you'll see the '90s won't have quite the expansive effect that the '80s have had. That's just my private view.

One thing that Carl [Leonard] said at one of the partnership meetings earlier in the year: "They'll have to get back to the notion that they're lawyers because they want to practice law, not that they're lawyers because they want to make a whole ton of money." I think that kind of attitude is going to have to prevail, because I don't think they are necessarily going to make a ton of money the way they have in the past. But anyway time will tell.

Labor, Tax, Probate and Other Work

Austin: Now, I think we've covered litigation, and I have not discussed Labor or Tax, because Labor and Tax were smaller departments; they were discrete. Hart Clinton ran the Labor Department in the '60s. He had a client called the Distributors Association, for whom he did a lot of collective bargaining, and he did a little collective bargaining for some of the sugar companies out in Colorado, and that was pretty much our labor practice.

As far as our tax practice was concerned, it was basically then a satellite--if you will--operation of the business department. It was very crucial, but most of the tax work came through business problems. So when I mention Memorex, sure there were tax problems, and when I mention the credit card business, sure there were tax problems, but what I'm saying is that those problems, the Tax Department, their business was generated by the Business Department.

Today the Tax Department has a tremendous state and local practice, and companies all over the United States are calling on these people. It's a very, very strong growth thing. It wasn't anything like that back in the time we're talking about.

Hicke: It looks like you also had a Probate Department and a so-called Real Estate Department.

Austin: The Probate Department has never been a very strong department in our firm. Not that we haven't had good lawyers working on probate matters, but we just never developed a strong estate planning, probate practice, the way we have in every other field. We just haven't done it. That's why you have this very small number of people: four.

Right now we have Dick Kinyon, and I believe we have one associate. We had a probate partner down in L.A., but he's left us and we don't have any probate down there. So you just have to take it as a given that Probate and Estate Planning have never really developed in this firm commensurate with the other departments.

So now we're in '68; you still have Hart Clinton running the labor Department. This is before James Paras took it over and started, with the help of a great many other people, making it the very extensive practice it is today. The reason is because Hart had this Distributors Association, and he did all the work for it, and when he finally retired, the fellow who was running the Distributors Association just shut the spigot for us. Here was Paras, new with the firm and the main client gone. Well, he was able to get things going.

Of course, Kirby Wilcox is the chairman, and he's got a case going now called the State Farm case, and he's got so many people working on that case, half of them are over in 160 Pine. That's a very big department now.

Let me explain about real estate. Real Estate was not a separate department. Business and Real Estate Department.

Hicke: But it's separate from the corporate?

Austin: They were and they weren't. They were separate. [Robert] Homans, the nominal head, never did anything on it. He's the fellow who committed suicide. Francis Hutchens and Kries never did too much. Berkman was kind of a journeyman type, but he went into the army and he is now a major general in charge of all the reserve troops in the country. Schoenberg left, Thayer left.

The only name that then amounted to anything in the so called Real Estate Department was Noel Nellis. When Noel became in fact the chairman of the Real Estate Department, he got a pretty good start--if I say so myself--from me. Some of these big life insurance clients that I brought in that were needing real estate advice all took to Noel like a fish takes to water, and the first thing you know Noel is on a fast track and he has built up the real estate practice in this firm from what he got from me into one of the finest real estate practices in the country. He deserves a lot of credit for it. He's a real hustler, that guy.

What can I say about the business department in 1968? Judge Holloway was by this time fairly inactive. I was active. Of course Marshall and Dave were partners; they were active. Homrighausen was doing mostly CBA work. Kelley was doing the Behavioral Research Laboratories' work. Lee was doing corporate work. I don't remember what Matt Schumacher did. Roland Brandel was doing the credit card work.

Steve Richards was doing a lot of corporate reorganization, and Carl Leonard was . . . I call him Weeps, that's a nickname, because he was always complaining to me that I gave all the good work to Richards and he got the grunt work from working for Homrighausen on CBA opinions. And I suppose there is a certain amount of merit to that, although I'd never admit it. As you might surmise, we are very close friends and with our wives we travel a great deal together and that sort of thing. Whatever faults in my management of Carl were, he's forgiven me.

I really can't think of anything else that happened in the '60s. We were still pursuing our strategic objective of getting good people, building the firm up, building the practice up, but we were not by any stretch of the imagination in the 60's addressing with any degree of success the profitability problem. We were one of the most unprofitable law firms in the country. That I think is the fitting way to say goodbye to the '60s.

Hicke: Did we ever talk about you looking through your timenotes for '68?

Finances of the Firm and Members

[Interview 5: June 20, 1990]##

Hicke: Well, as usual, we've got some things left over from before, and you came up with some interesting figures that you were just telling me about in regard to the firm income.

Austin: Yes, I became a partner in the firm in October of 1951, so 1952 was my first full year as a partner. The partnership gross income that year was \$500,224, and the net income was \$246,812. Now actually as a net to gross, that's a pretty good ratio: 50 percent in any law firm that had a net to gross of 50 percent would be considered pretty good.

Hicke: So that means efficiency in operations?

Austin: Yes. I don't know what the net to gross is of this firm today, but I'm sure it is somewhere down in the 30's not the 50's. So at my 6 percent interest, that gave me \$14,000. Well, of course \$14,000 in 1952 was just different money than it is today, but it's probably still quite a bit lower than the starting partner's take in the firm today, even accounting for inflation. So I think the young partners are doing a little better than we did.

Hicke: But what I also think interesting is that you said that wasn't a whole lot more than you were making as an associate.

Austin: No, it really wasn't. I was making \$9,000 when I was an associate. In any event that's the story on what things looked like. Of course, in those days, as this sheet indicates, we didn't have any audits; we didn't have an independent auditor come in. We had a so-called public accountant, not a certified accountant, come in and look at the books, and he made up this statement. It wasn't certified or audited or anything else. That's the only financial information that we ever received throughout the entire year on the operation of the firm. We just were practicing law. People tend to forget that there wasn't the preoccupation with money and efficiency and all that sort of thing that there is now. I'm not saying it's wrong, I'm just saying it's different.

Hicke: Well, did you have then a monthly draw?

Austin: Oh no. No, when I became a partner, I was told that I should build up my cash--nobody told me how I was going to build up my cash--but I was to build up my cash so that I had two months of expense money in hand, because there was no regular distribution of firm profits. They were distributed when the managing partner figured that he wanted to distribute them. Sometimes we might go as long as two months without a distribution. That's why you had to have this working capital--because you might not get any money.

Hicke: You never knew when you could count on another . . .

Austin: No. Well, you knew you'd get something within two months, but that's about it.

Hicke: And you didn't know how much it would be?

Austin: Oh no. We never got monthly financial statements or anything like people get today. No. As a matter of fact, I'm not sure I've ever seen this before.

Hicke: Could you read me the title of that?

Austin: It just says Morrison, Hohfeld, Foerster, Shuman & Clark, a partnership, Statement of Income for the Year Ended December 31, 1952. It has three columns, total, firm, 12 and 13 and then firm 1 for 5.60. All this firm business was that every time they took a new partner in, they considered that a new firm.

Of course, in that day and age, there were two classes of partners. There were the proprietary partners who owned the assets of the firm, and there were the nonproprietary partners who were simply paid a percentage of the net income. They didn't have any interest in the business. That's what I started out as. In order to buy in as a proprietary partner . . . I forget when I started doing that, but I didn't finally start being a partner who was getting money back . . . I was paying money into the firm for almost twenty years after I became a partner.

Hicke: To buy this proprietary . . .

Austin: To buy my proprietary interest, because my percentage kept going up, which meant that my interest in the firm kept going up, and so I had to pay for that extra interest.

Then in, I forget what year it was, but it's got to be after 1960, we decided that this proprietary-nonproprietary business was just a bunch of nonsense and that we ought to operate on the basis that you don't buy anything coming in, maybe you can buy a little

bit of the capital of the firm, which isn't much, but you didn't buy in on the receivables, which was the big item. Today the receivables owing are in the millions. For a person to buy in on them would be a very tough economic thing. So we cut that out.

Now in cutting it out, people like me who'd been paying in the longest, Bob Raven, who'd been paying in the next longest, and Marshall Small, who'd probably been paying in the next longest, you had to compensate these people. What was decided was that when they retired they would get a lump sum equal to a certain amount. When we set that thing up in the early '60s, the inflation rate all through the '50s had been very modest. Then suddenly this inflationary rate took off, which was absolutely incredible and the \$60,000, let's say, that they were promised in 1965, by the time they get to it would be worth far less.

I finally got mine in 1979, when I retired. But the others were still going strong and I think I probably was the one who made the loudest outcry on this, because I thought it was very unfair that I was getting paid off, whereas these other fellows, because they were still active partners, weren't, and the inflation was just making their shares worth less and less and less. So they finally paid them off.

But the net of it was that those of us who initiated that decision really took a real licking because of the inflation in that period. In other words, we should have been paid quite a bit more than we were, and Raven and people below him were proportionately more injured, actually than I was.

It's another example--and I can speak for the other people--of people who have stepped up forthrightly in this firm to rectify a situation which is wrong and have personally taken a real whack. I'm just hopeful that people that run this firm from now on will be willing and will have that kind of character and fortitude to do that kind of thing. If we had the proprietary system now, it would be a nightmare. It's interesting because I noticed in the paper, one of the firms--I think it was Brobeck [Phleger & Harrison]--was giving some consideration to having proprietary and nonproprietary partners. We lived with that and found you can't have two classes of partners; it's a bad atmosphere. You'd never see this firm go for that.

Hicke: Let me back up and ask you: how did this get started and what was the purpose of it?

Austin: The purpose was that in the first instance, these founders so called of the firm that split when Brobeck went one way and

Morrison went another, those founders provided the capital of the firm; they provided the money for the books and all that sort of thing. Now, a law firm doesn't have much capital in proportion to its income, but it has a library and fixtures, and of course now we have a lot of expensive computer equipment and all that kind of thing; so I suppose it amounts to more than a million dollars, several million maybe.

But the point was that to have a system in which young partners spend three quarters of their partnership lives buying their interest in the partnership and then in their older years getting the money back doesn't make any sense, because when you need the money is when your kids are going to college--when you're in your late forties, early fifties. That's when you need the money. You don't need the money when you're sixty. By that time, everybody's out of the house and earning their own money. So it was just a screwed situation.

Hicke: So when, say Mr. Hohfeld retired, he sold his interest in the furniture, or whatever . . .

Austin: He got paid, yes. He got paid for his interest in the receivables and the furniture and fixtures. I forget whether today the partners buy in and buy out of the equipment. I don't think so. I think when you're a partner you have an interest in something and when you cease to be a partner, you don't. That's just a little aside, but that's the way the firm used to work.

It's interesting that other people would be considering going to this system as a way to try and figure out what to do with people that they don't think are quite up to snuff. But I think they are going to find that's going to create more problems than it solves. I lived with that system. I was a nonproprietary partner for four or five years before I became a proprietary partner.

Hicke: That's what I wanted to ask: what are the qualifications for buying in? Was that another step up?

Austin: Yes. When you got to a point in the minds of the people then running the firm, that you were going to be a comer, a leader, then they offered you a change. Some people never got invited.

Hicke: So it really is another tier of partnership?

Austin: Yes. If you're going to call them partners and have two distinct tiers, why, it does create problems. We got diverted on that one.

You asked me about the offices of the firm. Did you want to take that up now or later?

Antitrust Matters

Hicke: Why don't we leave that till later, because I have a couple of questions left over from the '60s, if I can find them here. I have a sample of an office memorandum that you wrote on the scope of Section 10 of the Clayton Act, and I think you had a case on that that went to the Supreme Court. But my question is: what was the purpose of writing this memorandum? Was that to keep people up to date?

Austin: [Reading the memo]¹⁷ Well, I'll tell you what this memo was all about. This question first came up in a real sort of way when we represented a consortium of banks, with Crocker in the lead, that did part of the financing of these containerships that Matson Navigation had under what was known as Title XI insurance, government insured loans, they had a very low interest, but the question involved was that on the board of Crocker Bank there were interlocking directorates with Matson Navigation Company. In fact, Mr. Crocker and Emmett Solomon were both directors of Matson Navigation as well as of the bank. This Clayton Act provides that you can't have these interlocks with respect to certain kinds of utilities, such as shipping companies.

So when we set up these loans, we provided that the notes that would be issued for the loans would be non-negotiable. Now this is a very technical argument, but we were satisfied in the '50s when we did the ship financing that got us out from under the Clayton Act. Well, then along came a case called Klinger v. Rose in which this non-negotiable notion was rejected.¹⁸ That was by the district court. Then the court of appeals, by one of the great judges of all time, Judge Friendly of the Second Circuit in New York took the position that the sweep of the Clayton act was much narrower.

Hicke: Do you know his first name?

¹⁷ See next page.

¹⁸ Klinger v. Baltimore & O.R. Co. 432 Fed 2 506.

Austin: No, and it isn't Justice Friendly, it's Judge Friendly. Judge Friendly wrote this opinion in which he took the position that Well, let me just give it to you; I have it right here. This is just a wonderful case. Here's what he said, "Well, it may be that the transaction here can be brought within the strict letter of Section X of the Clayton Act. Rigid adherence to that way of reading a statute was condemned four centuries ago and the wise observations that sometimes the sense is more confined and contracted than that letter and sometimes is more large and extended." And he cites this case in the Court of Common Pleas in England in 1573.

He said. "This is the case of the former. I should have thought the time long since passed when merely a literal approach would be taken by a court whose most illustrious member said there is no surer way to misread any document than to read it literally. Section 10 was a narrowly drawn statute designed to meet a particular set of experienced evils." Then he went on to say it should have a very restrictive meaning.

And what this memorandum that you have here was telling the folks was that this is what Judge Friendly said and some of our concerns that we had about Section 10 don't persist, because it was a very narrowly drawn thing for a specific evil, which was the interlocks between railroads and banks.

Hicke: And what you were doing was letting everybody know the . . .

Austin: Yes, this was just a memorandum that went into the memorandum file in the office to let them know that Friendly had set us all straight on Section 10.

Hicke: That reminds me of another question: what other attempts would people make to try to put things they were doing to the record so you didn't have to reinvent the wheel?

Austin: Well, we've always had a thousand memoranda of law down there in the library that have been written by people in this firm, and they are all well indexed. If I were starting out on a research project, the first thing I'd do would be to look at that index. People today are so preoccupied with Lexis and all that, I don't know whether they still do but this memo file is just a gold mine of information. Some of the best thinking that's been done in the last fifty years in this firm is in those memoranda of law. As I say, I don't know how much people use them today, but we certainly did. If I had a research problem today, that's the first place I'd go.

18 OFFICE MEMORANDA FILE 2d #7

MATTER OR CLIENT

AUTHOR: John P. Austin

DATE: April 21, 1976. 3 pp.

SUBJECTS:

PUBLIC UTILITIES AND CARRIERS
Officers & directors--
interlocking

RESTRAINT OF TRADE
Clayton Act §10

STATUTES
United States: 15 U.S.C. § 20

DIGEST:

Scope of Section 10 of the
Clayton Act.

M E M O R A N D U M

To Librarian
File under
Restrictive Trade
Clayton Act 10

Re: Section 10 of the Clayton Act

Anti Trust - Leave
Clayton Act
10

Section 10 of the Clayton Act (15 U.S.C. § 20)

requires competitive bidding in enumerated situations where certain kinds of director and other interlocks are present. In the past twenty years this office has had occasion to consider the reach of Section 10 in a number of contexts such as, (1) what types of instruments and transactions are encompassed within the phrase dealings in securities, supplies or other articles of commerce and in that connection consideration of whether the scope of Section 10 is broader than Section 20a of the Interstate Commerce Act (49 U.S.C. § 20a) as it relates to securities or other articles of commerce, (2) are water carriers which are not subject generally to the jurisdiction of the Interstate Commerce Commission "carriers" under and subject to the prohibitions of Section 10, (3) as to water carriers not subject generally to the jurisdiction of the Interstate Commerce Commission is Section 10, if otherwise applicable, superseded by Title XI (46 U.S.C. §§ 1271, et seq.) in transactions relating to Federal ship financing insurance, (4) are transactions between a parent and a wholly-owned subsidiary or between two commonly wholly-owned subsidiaries subject to the inhibitions of Section 10 and in that connection when pursuant to

Carriers
Interlocks
Directors
Ship
Commerce
Act

Section 5 of the Interstate Commerce Act (49 U.S.C. § 5) a holding company system is created pursuant to an Interstate Commerce Commission order is there immunity from the antitrust laws including Section 10 and (5) are contracts made in violation of Section 10 (no competitive bidding where required) unenforceable or void by reason of such violation.

Memoranda and notes covering these matters will be found in file No. 3593(311).

Certain general comments may be helpful. With some feeling of comfort we used to take the position that the definition of "securities" in Section 10 had the same meaning as "securities" in Section 20a of the Interstate Commerce Act and since the Interstate Commerce Commission in Lehigh Valley and other decisions had narrowed the 20a meaning to exclude nonnegotiable securities, we were safe in taking the same tack in Section 10 situations. However, in view of the rejection of the nonnegotiable or no note approach by the judge in Klinger v. Rose, 291 F.Supp. 456 (S.D.N.Y. 1968) reversed on other grounds in Klinger v. Baltimore and Ohio Railroad Company, 432 F.2d 506 (2d Cir. 1970) and in view of the Interstate Commerce Commission's present desire to promulgate Ex Parte 275 expanding the definition of securities, I no longer believe that to be a safe approach.

On the other hand cases like Klinger v. Baltimore and Ohio Railroad Company, Cleary v. Chalk, 488 F.2d 1315

(Cir. Ct. D.C. 1973) and Schleitt v. Chesapeake and Ohio Railroad Company, 43 F.R.D. 175 (1967) support our view as to the inapplicability of Section 10 to transactions between a parent and a wholly-owned subsidiary or between commonly wholly-owned subsidiaries.

As to the other issues mentioned, subsequent case law has not made us much wiser.

John P. Austin

April 21, 1976

Hicke: Do you think people continue to write these memoranda?

Austin: I think so. I think practically every law firm must have an index like that, because that's a mine of information over the years. Some of your best people have written some of the best memoranda when they were juniors. David Nelson is a good example of that and so is Marshall Small. That file is replete with excellent memos they wrote for me when they were working for me as young lawyers on difficult issues.

[looking at memo] I did work on this one. This is one that was published in the Business Lawyer in addition: 26 memoranda, file #3. This is a memo that Dave Nelson wrote and I scanned and made sure it was right. He probably had been in the office two or three months when he wrote this memo.

Hicke: That one's on the Uniform Stock Transfer Act [1909].¹⁹

Austin: Yes. I think I told you in describing the initial things we did on Memorex, the most critical thing to get started was a memorandum as to whether those fellows were taking proprietary information from Ampex, taking it over to this company they were going to start. Dave's memorandum was a very important memorandum. As I say that was one of the first things he did when he came into the office.

Consolidated Freightways

Hicke: A while back you told me you were going to say a little bit more about Con Freight mergers and acquisitions. Do you think we've covered most of those?

Austin: Well, particularly for the '50s, I think we've probably covered it. That's when the big ones occurred. There were a few in the '60s, but mostly the '50s. I see by the paper this morning that they're in real trouble because they tried to swallow a whale, Emery Freight, and they passed their dividend.

Hicke: Did they just sort of stop expanding after the '60s?

¹⁹ John P. Austin and David E. Nelson, "Attaching and Levying on Corporate Shares," 16 Business Lawyer 336 January 1961.

Austin: They never stopped acquiring small companies here, there, and everywhere. But the point was that they had the strategic line in place as a transcontinental freight company by that time. When we first started on this program, Consolidated Freight ran up and down the Pacific Coast and then, as happened in those days, they couldn't go directly to Salt Lake. The route had to go up to Idaho and then back to Salt Lake and then to Chicago. But now of course it has operating rights all over the United States.

Hicke: Did they have a specific, laid-out goal for the network?

Austin: It sort of developed as time went on. The first thing they did was to fill in their rights in the Western half of the United States; then they started nibbling away at the East. Now they have a pretty comprehensive spread all over the country, including to Alaska.

Hicke: Since we're on them, I think maybe you were involved with the building of their new headquarters in Palo Alto?

Austin: Oh, yes, sure, that sort of thing we would have been involved in if there was any legal work of any consequence on that. I don't remember is as being any great deal. Because what they did was pretty straightforward. Stanford has all that land down there, and it's very heavily zoned, and they say exactly what you can do and what you can't do. You have it a lease for a fixed number of years, but they never sell their land, they always retain control of it.

Hicke: I think that's in the will.

Austin: Could be.

Legal Assistants

Hicke: Okay. Back to the firm, I have some questions about what was going on in the firm. For instance, I have a note that MoFo was one of the first California firms to employ legal assistants in the late '50s.

Austin: Yes, I think that's probably true. I think the first one that we hired, certainly one of the first, if not the first, was a woman named Frances Newman, whose husband, Frank, was a law professor at one time. He was dean and at one time he was on the Supreme Court

of California. Now, he's back teaching and I guess he's retired. He's a very close friend of mine.

They had a son who was quite sick and he destroyed himself, and this was a very traumatic thing for the family. Bob [Raven] and I were talking about this, and so we said well, gee, why don't we give Frannie a job? So she came. She's a very bright person, and she's now very high in the legal assistant fraternity. She works for another firm now. We took her on, and as I say, she was one of the pioneers in the legal assistant movement and one of the very first that we had, maybe the first.

Hicke: What did she start doing?

Austin: She worked on the Avocado case, which was an antitrust case that Bob Raven had. It involved breaking down a lot of depositions and cross references and all that sort of thing, the way they do today. She worked steadily on that, was very helpful.

It finally became important for her, she felt, to have more flexible working hours, and we felt that people should by and large be coming in at the starting time and leaving at quitting time. We later got a little more flexible on that, but that's the way it was when Frannie started work. Not much flexibility then. It was a very friendly parting, and, as I say, Frannie and Frank are two of my closest friends.

She then went on and she now works for [Arthur J.] Art Shartsis, who is an ex-MoFoer who has built a very thriving law firm. I don't know how many people he's got there, but it's a good firm, and they are very busy, and Frannie's the senior doyen in the legal assistant group in that firm and in the San Francisco community. She is recognized as one of the old founders and starters of the whole business. Of course, she never went to legal assistant school or any of that. She didn't need to. She was Phi Beta Kappa at Stanford.

Hicke: Well, I'm interviewing Frank, if I can catch him, so I think I will ask him about her.

Austin: With reference to this firm or on something else?

Hicke: No, on the history of Boalt Hall and his work in the Supreme Court.

Austin: Pretend you don't know what she did and ask him what she did.

Hicke: Actually I'd like to get an interview with her.

Austin: It would be very interesting, because she is one of the, if-you-will, Jackie Robinsons of the legal assistant fraternity. I'm sure when Frannie started there couldn't have been over twenty of them in the City, if that many.

Hicke: Who came after her?

Austin: Just a whole bunch of other people. I don't know how many legal assistants we have here now. Many of these legal assistants go on to law school and become lawyers. So for many of them, it's been a stepping stone.

Social Activities of the Firm

Hicke: I've also read that Peck and Kinyon organized a softball team call the Morrison Marauders.

Austin: Yes, we had some fantastic baseball players. Kinyon and who was the other?

Hicke: Peck.

Austin: I didn't realize Girvan was one of the organizers. I never thought of him as being an athlete. I would have thought that Kinyon and Garrett and Haley Fromholz and shortly after that Carl Leonard. These are all fellows who were hired in the '60s. Kinyon was hired in '65, Fromholz was hired in '67, Leonard was hired in '68, Garrett came with us sometime in the '60s--he was a lateral--and this was a fantastic team that started what is now a regular thing in Morrison. In the summer we have a baseball team that competes in a league.

Hicke: Who did they play when they started?

Austin: They played other law firms and other law departments and people like that. They were very good, and over the years we won the league championship a number of times. In fact, we often kid about the fact that every so often we'll take somebody on as an associate not so much for his ability, but so he'll help the team. That's of course a joke, but that's what people like to say. Anyway, that's where that started.

Hicke: Did that generate a lot of spirit?

Austin: Oh yes. It's a lot of fun. For instance, my son is thirty-nine and married and has four kids, but he plays on the Miller, Nash team up in Portland much the same way these fellows in their late thirties and early forties were playing baseball for Morrison.

Hicke: Then I have the beginnings of the Thursday Afternoon Get Togethers, which started as a tea?

Austin: That started as a tea, then it sort of got into where somebody brought a bottle, and so we had cocktails, and then we for one reason or another that I've been into with you before, we decided well maybe we ought to try it a different way. I think the way they do it now is they still have a Thursday Afternoon Get Together, but it's wine and cheese.

Hicke: Okay, because the next thing I have is the firm wine party; I don't know if that's the same thing?

Austin: No, the firm wine party is an annual event in the summer in which they go to some winery, and it's often done in conjunction with taking the summer associates. It's all part of that program.

Hicke: The note I have says it began as the James C. Paras Steak Extravaganza.

Austin: Well, this is because Jim Paras fancies himself--and I guess he is--an expert on wines. He's a member of the San Francisco Food and Wine Society, which is a very exclusive group of folks who think they know a great deal about wine. Maybe they do, for all I know. So he was a moving force in that, because he was genuinely interested in wine. That's why it's called what it is.

Time Notes for 1968

Hicke: Did you find anything in your time notes that might be of interest?

Austin: Oh, yes. I think at one time I mentioned to you why I felt that the professional life expectancy, if you will, of a business lawyer would be shorter than the life expectancy of a litigator, because the business lawyer sort of comes up the track with people more or less his or her age. But the younger people naturally want to congregate with a younger person, so that it always struck me that around age sixty-five was a good time for a business lawyer to get out of the business. Because his contemporaries

were getting out of the corporations. I think I mentioned that to you.

Well, it was sort of interesting: I looked at my notes for '68 for instance, and '73, and then '77. Now, '68 would be sort of a high-water mark of my activity in terms of the variety of mix. I was born in 1914, so in '68 I'd have been fifty-four, you know, right at those peak years, and it's illustrated in this 1968 notes. Just a variety of things.

I represented underwriters. I represented our chief underwriting client--Blyth--when they took on the first and primary lease in the new Bank of America building, so that was a kind of pathfinder lease. Completely different field of law from underwriting, but you know, we did those things. I represented Consolidated Freightways in a variety of matters. Attended board meetings. Another life client here, a lot of financing.

Hicke: Another life client?

Austin: Life insurance client. Life insurance companies do a lot of financing, as you know. They do home mortgages, but more importantly than that, they finance companies through the issuance of notes and they call them "note purchases." They buy them and they put them in the box and then when they're due, they take them out. They don't necessarily maintain a close relationship with the company they've loaned the money to, the way a bank would. A bank will be kind of sitting on the borrower all the time.

Hicke: That was New York Life Insurance?

Austin: Yes. We had a number of these life companies at that time: Metropolitan Life, Massachusetts Mutual, New York Life, and we'll be coming to them in a minute. I see here that I did some miscellaneous work for California Bankcard and of course attended all their board meetings. I'm emphasizing attending the board meetings, because I'm going to come to that in a minute.

Metropolitan Life: I did a note purchase for them, a couple of them. For the California Bankers Association, I did some work, attended some board meetings. I did an acquisition for Reserve Oil and Gas. Crocker Bank--you understand this was before we'd gotten back into the business--but I did these key loans that they made to Matson Navigation Company. For some reason they always had me do those.

Then on the other side of the table, I did a Cutter Lab agreement with New York Life, also our client, as you know from

above. Now on this one, I was representing Cutter Lab. Then I had a number of things for Memorex; I had a stockholder relation; and then a new start-up company called Siliconix, which made semiconductors, and that involved financings, attending board meetings and that sort of thing.

Then Providence Securities Company, which was the Crocker family company, very active in investments. I did a couple of deals for them. Then we had a new trucking company that I did some work for. Then we had another new client, a company called General Indicator Company, that made these time/temperature signs. That was a new client. Then I did some work for the San Francisco Clearing House, and that involved going to board meetings. Then a friend of mine sold his business and I represented him on that, then I did some work for another underwriter.

A company that I'd been a director of for a number of years, a little oil and gas company called MJM&M Oil Company--I told you the story of how Mr. Keyston and I took that company over by going and meeting with these three old men in a board room--I continued to represent that company, and then it reorganized itself and went into some of the big buildings that you see as you do down the freeway, down 101, right at the Broadway Burlingame overpass to the left. Then we had another client--American Forest Products Company, which was bought by Georgia Pacific. Well, that's quite a variety of things. Then in '73 . . .

Hicke: Can I stop you for just one thing? When you went to the board meetings, what was your responsibility there? Did you actually get involved or did you just . . .

Austin: Well, yes, they would ask me what my view was on various matters where they thought they needed counsel.

Hicke: Okay, so you were there to give them legal advice right on the spot?

Austin: Yes. There must have been four or five or six of these companies that I was regularly going to the board meetings of, because the practice of law then was still that you had a direct relationship with the CEO. Now I'm going to come in a minute to when this changed.

Then in 1973, we were starting to get more into Crocker work. I went over to Germany to try and buy a German bank for Crocker.

Hicke: It didn't work out?

Austin: It didn't work out. They wouldn't give us any decent information. Crocker took over a huge, busted bank down in San Diego, and of course that involved constant board meetings and all kinds of work for the firm.

Then I did another note purchase agreement for Massachusetts Mutual. I handled the reorganization of a family business, Pacific Rola. A client of Bob Raven's called the Daily Review Newspaper had some corporate reorganization problems. Then in '73 the Moët-Hennessey people began to get very fearful that France was going socialistic and they might lose their entire champagne operation up in Champagne, and they came over here to start what we would call champagne--but of course they don't use that word, they use sparkling wine--operation up in Napa.

Hicke: Oh that's interesting; I didn't know what the motivation for that was.

Austin: That's what it was. I handled that, and Frank Latchum did all the tax work for them.

Hicke: When you say you handled that, you handled the contracts for buying the land or the . . .

Austin: Well no, I set the company up.

At that time I represented a fellow named Billy Kahn. Schwabacker & Company was a fine old stock brokerage firm here in San Francisco that went belly up because it didn't know how to handle its computers. Mr. Kahn was one of the principal investors in Schwabacker, and I spent a lot of time trying to extricate him from that problem.

Foremost-McKesson had become a client, and I did some work for them. Of course, I continued to work with CF [Consolidated Freightways], continued to go to board meetings. Behavior Research Laboratories, which I think I mentioned earlier. I went to their board meetings. We got a new company called Fat City, which was a big cattle feeding operation down in central California which made a public offering of its shares.

Hicke: In the Valley?

Austin: Yes, and they went public.

Hicke: Is that where that big feed lot is? You drive by there when you do down on Highway 5.

Austin: Yes, it was near Gilroy; I can't remember exactly what town it was in. And that's the only time on a registration statement deal that I ever got a bug letter. Now a bug letter is the worst thing you can get from the SEC; you are virtually accused of professional dishonesty, or the company is, but you get painted with the same brush. So I took these people back to Washington, and fortunately we got a guy who knew something about the cattle business in the SEC, and Dave Baudler was a young fellow in the office then, and he went along with me, and we finally got that thing straightened out.

Hicke: What was the problem?

Austin: The guy who wrote the bug letter didn't understand the cattle business. He thought we were producing a scam, but there wasn't any scam at all.

Then Memorex was doing some things of one sort or another, apparently I had to go to board meetings on that. I worked on a very old client run by a very close friend of mine now, Curt Smith Dinwiddie, on the reorganization, I noticed--this was 1973--I noticed I had a lunch with Claude Rosenberg and that was the start of our relationship with the so-called RREEF clients and they are today, I think if you were to take the last five years, they probably produced as much income as anybody, with the exception of maybe Fujitsu.

Hicke: Are you talking about Australia and New Zealand?

Austin: No, these are people who have real estate investment trusts that they sell, and it's a very, very active business. In other words, instead of buying an apartment house yourself, you buy into a real estate investment trust that has a whole bunch of real estate deals. This has been a very, very successful operation.

Hicke: Does RREEF have some sort of significance; or is it an acronym?

Austin: It's just an acronym. Then once again our old friends, J.S. Straus, showed up. We got a new client, First California Corporation. This was a law school classmate of mine in Kansas City, and I started to say I think he played the game a little differently than we do, and after we sort of left First California they got into an awful lot of trouble.

Then we got a company called Specialty Brands that bought Spice Islands, and that involved acquisitions and director's meetings and all that. I wondered how we got that business, and that was a situation where this fellow came into the Crocker Bank

and said he had been working in New York and he wanted to start an operation in San Francisco, who should he get as a lawyer? And they were nice enough to suggest us and specifically me. That's the way we got the one I mentioned in '68, Siliconix, the semiconductor company came in that way. Memorex came in from, as I told you, a recommendation from Bank of America. In many instances the business that I brought in was a result of having worked with banks.

Hicke: You started to say that Specialty Brands turned out to be a big client?

Austin: Yes. It was a very active client. I don't know how much work we do for them now.

Time Notes for 1977

Austin: Now you're going to see when we got to '77 it's kind of interesting. Now we're heavily involved in Crocker Bank, because in 1974 I made that deal with Wilcox and so now, let's look at '77 and contrast it with '68 and '73. Furthermore in '77 I'm two years from retirement.

I see Crocker Bank board meetings, stock issues, banking issues, CF, board meetings until around, no I guess I'd ceased going to the board meetings because they had gone in-house. I'm going to explain this in-house thing when I get through with this.

Then some more work for Metropolitan Life, a little work for M&J Vineyards, Foremost Acquisitions, Mass Mutual note issue, Prudential note issue. The only start-up in 1977 was a guy who came to me and wanted to market bull semen; artificial insemination is the way most of this business is done these days. I worked on a registration review for Reserve.

But predominantly, 1977 was a bank-related year. That became increasingly so because I pushed all this other work down to these other guys, and I wasn't getting new business, so the bank was pretty much it. So when I went out in '79, why, if we were to look at '79 it would look like '77--probably 95 percent of what I was doing was for the bank.

Hicke: So at what point looking towards retirement did you start, well I know you had been doing this all along, but did you really . . .

Austin: No, this was the natural evolution. I mean, other people in the firm were now having these people come in to see them for the start-ups and that kind of thing.

And also in full force in effect by the middle '70s: now major corporations were starting to have inside law firms and what they called a general counsel, who was the person to whom the outside law firm reported. The outside law firm no longer reported to the chairman; it reported to the general counsel.

Now Crocker Bank was the only significant exception to that. Because I had this relationship with Emmett Solomon and then with Tom Wilcox. But throughout the firm, this was becoming more and more the pattern, and this is the pattern today. We don't represent anybody today that we have a relationship such that at 8:00 somebody goes over and sees the CEO and then goes to all the board meetings and all that sort of thing. The only time anybody goes to a board meeting now is if they're reporting to the board on some legal matter that we are representing them on.

Hicke: After you retired did this relationship with Crocker change too?

Austin: Well it was starting to change. Yes, and of course the Crocker thing kind of went down the tube very shortly after I retired.

Hicke: So they were quite dependent on you?

Austin: Yes. I had to come back out of retirement to help them. I did that in 1980, when I came back from England. They wanted some help when they were adjusting their interest with the Brits and selling a huge interest in their bank to the Brits and getting a huge infusion of capital.

So what I'm saying is that this change in the relationship was one which was going on steadily probably starting in the late '60s, and people who were not aware of the fact that you were now making your contacts with the general counsel would tend to miss the boat. Now Morrison's needle was straight up, and Morrison saw this move, saw the change, adapted to it, picked up a lot of business in the American Bar Association through general counsel that all of us met in that kind of work. In fact the way we got these life companies was because I got to know their general counsel in bar work in the American Bar.

Changes

Austin: The whole thing changed and for a while, these general counsel would scatter the business as much as they could. They didn't want any one person to have too much. But I'm told now by some of my friends who are still general counsel to big companies and somebody down in Los Angeles told me this yesterday: he was saying that Citibank had told him that they were going to make San Francisco the headquarters of their west coast operation, not Los Angeles, but San Francisco, number one; and number two, they were going to cut down on the number of outside law firms that they used. As I told you, other general counsel have told me this too.

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Austin: That's going to mean good news for the people who are picked and bad news for the people who aren't, and I rather suspect that because of the reputation of excellence that this firm has built up that we're going to be one of the firms chosen to be say on the Citibank short list and on the short list of a lot of other companies.

Hicke: Why are they turning this trend around?

Austin: Well, because they realize that they're going to get a better quality of service and that's more important than penny pinching and saving a buck here and saving a buck there. They realize that the quality of the service in the long run is going to be more important to them than whether they can get the job done for \$2,000 or \$750.

Hicke: Isn't this going to contribute to the growth of large firms that will now become even larger, because a full-service firm is going to be even more important?

Austin: Yes, I think it is going to result in one of those situations where the so-called mega firms are going to get the business and the other people aren't.

Hicke: We finished your time notes, and you talked about the in-house counsel and the change from dealing with the CEO so . . .

Austin: Yes, but that's a very, very significant thing. Both what I just told you and also the growth of the in-house counsel. Because as I mentioned several times in our interviews, law was practiced pretty much the same way from 1833 through 1950s. There wasn't an

awful lot of difference. The relationships with the clients were the same. That first change in the '50s was something that we didn't pick up, because the practice of law was becoming much more complex in the sense that we had many, many more regulations and many more laws and you needed a bigger firm to be able to provide the service to handle all these complexities.

We missed the boat on that in the '50s, we didn't see that coming, and we damn near went down the chute as a result in the early '60s, because all the other people around here--McCutchen, Pillsbury, all these people--were expanding, but we hadn't expanded. When I talk to these people about the history of the firm, I emphasize this.

In the early '60s, the culmination of our failure to note these significant trends in the practice of law and do something about them damn near floundered us, whereas, having learned that lesson, in the late '70s, and '80s we were at the front of the pack in seeing the necessity for another major change, which people are just coming to. That is, if you want to be in the mega firm business, that is to say, full-service law firm business, obviously today a very important part of that is the international.

How many firms in the United States have offices in Japan? We have, I think, the largest office in Japan. And also the necessity for offices in other parts of the United States has become a very important thing. People like the fact that they can call Morrison in San Francisco or Morrison in Washington or Morrison in Los Angeles or Morrison in New York, just to mention the big ones, not to mention Orange County or Colorado.

Hicke: Hong Kong.

Austin: Well that's the international side.

Hicke: Well, so you've got international corporations that are now going more and more to depend on one law firm and that law firm has to reflect that need.

Austin: Not necessarily one, but a few.

Hicke: Okay, fewer law firms.

Austin: And the number of firms that are going to fit the bill I think are going to slim down. I don't think everybody who is a so-called relatively big player in the 1960s and '70s is going to be a big player in the '90s and the 21st century. I think Morrison, as I

say, learned its lesson, and that's what I call forward planning, and that's what Carl Leonard, our chairman, is so fantastically good at. He spends a tremendous amount of his time thinking about the future, as he should. We never had anybody do that in the '50s. Just finally three of us got so scared that we were going down the chute we had to do something. The other fellows just sailed right along.

As I was telling the summer associates, I hate to be so critical of people who were my superiors and my really good friends, and they were just superb lawyers and people, but they didn't have any more idea of forward planning than my Aunt Suzie. Even my dear lovely friend Mr. Foerster would be one of the most culpable. He was just kind of riding along and he didn't do anything about providing backup support on Food Machinery. So we lost the client.

Hicke: Sounds like your history talks are also a little bit of prescription for how to do things in the future.

Austin: One of the things I mention is that if you don't have constant, continual forward planning and thinking, you're not going to make it, because things are changing much too fast in the legal profession and have right along since World War II.

Chairman of the Management Committee: 1971

Hicke: All right. In 1971 you became chair of the Management Committee.

Austin: That's right. Of course in those days the Management Committee consisted of just the department heads. We had four department heads and the chairman of the Management Committee, who might also be head of a department, so it was a very small group, and a managing partner.

Hicke: Who else was on the committee?

Austin: The managing partner at that time was Marshall Small, and he was not the equivalent of the chairman of the firm, because I was chairman of the Management Committee.

Hicke: You were chairman of the firm.

Austin: No, it wasn't the same office. It was a more collegiate office. I was chairman of the Management Committee. The Management

Committee met every week, just people in San Francisco. So we could have a Management Committee meeting on five minutes notice, just assuming everybody was there.

Hicke: That was only twenty years ago.

Austin: And it was run in a very collegiate fashion. It wasn't one person making all these decisions. One of the things that I've been accused of in the firm is they say as I've grown older I've become less democratic, because I was always a great believer in consensus operation. But the answer to that is very simple: when this firm had forty lawyers and had a Management Committee of five lawyers and we were all in SF, sure, collegiality worked fine. But when you have 525 lawyers scattered all over the world, there is no way . . . it's a function of size--the bigger you get, the less collegiate you can be, and your reliance and trust has to be in your chairman and your ability as partners--all 175 of them or whatever it is, 200 I guess now--to get rid of the chairman if he's not performing.

Hicke: They have to delegate their responsibility?

Austin: They cannot sit around anymore in partnership meetings, or even in policy committee meetings . . . that is why we now have not a management committee, but a policy committee, and the policy committee is chosen not by the partners--it's ratified by the partners--but the policy committee is chosen by the chairman. That committee is just for the broad range of very significant matters in the firm, and they chew them over with the chairman. He picks the agenda and they'll take it back to the firm.

But the firm--maybe the partners would be hurt to hear this--but the firm as a decision-making body is really, in my view, kind of a charade. But it's a good one. I suppose people feel a little more participation if they're part of these decisions.

For instance today at lunch they will be considering a new partner, a lateral partner. Now I personally don't see how whoever is at that meeting can decide. All they've had is a memorandum on the subject and they've met him, but it seems to me that the real judgment on that has to be made by a smaller group of people. That's why I've lost my reputation as being a collegiate democrat. But I don't believe in a big firm you can run it that way. We've had some serious problems that it's not necessary for me to go into.

Hicke: Back to 1971, who else was on the Management Committee?

Austin: The department heads: Jim Paras, Bob Raven, Frank Latcham, myself and of course, Marshall Small as managing partner. I think that is about it. It was the department heads and I've hit tax, labor, litigation, and business. I was head of the business department.

Hicke: What were your major changes?

Austin: Well, we were at that point still, as I've told you, in these various phases of the expansion of the firm. I like to say that from the early '60s until Bob took over as chairman of the Management Committee, we were working on building the firm and building the practice, primarily in SF. We haven't gotten [in these interviews] to the opening of the other offices. I have some things to say at that point. So we'll just put it at that; that's where it was at that point.

Then, in my view, when Bob came along, when he in turn became chairman of the Management Committee, and then rightly in my view insisted because the firm at this time was getting bigger and bigger, that that structure wouldn't work and that we didn't need to have a troika. We had a troika for a while; we went from the Management Committee to a troika, and that was one of my ideas and I don't think it was one of the greatest produced. He insisted that we have a chairman and that he rise or fall, and we all agreed, and we probably should have done that a little sooner than we did.

Hicke: Well, when things are changing I think there's a certain amount of trial and error you have to go through.

Austin: Well, that's true, but I always think of Bob as the big territorial expansionist. After I'd gotten the LA office started, why then he started thinking globally, and we got into Washington and all these other places, like London.

Hicke: Let's start talking about that, since we're on it.

Austin: Well, he was firmly of the view that it was necessary. If we were going to be one of the big firms in the coming years, we had to have offices in different key locations, and he was the great expansionist in that sense.

Then to capsule it, Leonard comes along, and now we've got the people, we've got the notion of the geographical expansion, but we're still--in 1980 or 1984 when Carl took over--we're still financially, for a firm of our size, we just weren't doing as well as we should have been doing. Due to Carl's efforts on a whole bunch of very shrewd business practices, he was able to double or

triple the average partner's take. Of course, the law firms have become more profitable in the last six to eight years, but he really was shooting Morrison up faster than the average. Well, of course, they were lower to start with.

But anyway, he got them up there to a point where, as I tell these young people today, the summer associates, I say, "Look, if the top dollar is what you want, don't bother with Morrison; we've got too many other agendas on our plate."

I tell them our agenda is basically this: we take a lot of money out of the community; we think we owe a lot of time back to the community. So we have a very, very substantial pro bono program. We believe in pro bono; we believe that quality of practice is our name and our goal. But as I said, we have a third thing in mind and that is our private lives. Most of us are married and have children. There's no point in getting married and having children if you're not ever going to see them.

It's very easy on this scale to turn that hose, crank up another hundred hours per lawyer per year, and you have your million-dollar average, but we feel that the pace at which we are going is just about right, and we feel in truth that people do have a significant family part of their lives, and that's what they should have. If we're interested in that extra two, three, four or five hundred thousand dollars, we could get it if each one of us were here working day and night like they do in some of those New York law firms. I just tell them frankly, if you want the money, that's the place to go.

Opening New Offices

Hicke: Okay, back to 1974 when the LA office was opened. I have a memo, maybe this is a review of the opening of the office there.

Austin: [Reading the memo.] This is a very interesting memo, but now, repeat your question.

Hicke: How did you happen to open the LA office?

Austin: Now that was very simple. When I went to Mr. Wilcox, I told him, in connection with trying to get the Crocker business, I said, "We will cover your business statewide," and he said, "Fine, that's what I expect." Then he said to me, "You don't have an office in LA," and I said "Well, we'll remedy that."

So I came back to the troops and I said, "We need to open an office in LA, and I need volunteers." Not a volunteer. Finally from the back of the room comes a voice, and I never did discover who said this, "We'll follow you anywhere, John." I said, "Well, thanks a million, that's just great."

I couldn't get anybody to do it, and I was really beginning to get embarrassed. Finally, one associate, Jim DeMeules, a very bright, able associate who must have been fairly close to being a partner but not a partner, he and his wife Penny agreed to go down to LA. The firm wasn't even at that point willing to commit anything. So DeMeules got a desk in the Crocker Bank, and that was the LA office of Morrison & Foerster.

There are people in the firm today who will deny what I am about to say, but it's actually the truth. I said, "If we get a base at the Crocker Bank, we want to expand as rapidly as we can in the other fields." One of the important partners in the firm spoke up and said, "No, we don't want to do that; we're going to do this bank work and that's going to be it." Well, fortunately that view didn't prevail. But that was the kind of thinking.

You know, when you look back and think how hard it was to think of opening an office in some city other than SF, it was like pulling hair to get these people to even consider the possibility. That's why we put poor old Jim in the Crocker Bank building in LA. I forget how many years it was before we finally had our own office, I suppose it was two or three. Then as we got more people, we got going on matters such as things mentioned in this memorandum here, which is a very interesting memorandum. You ought to put it in the archives, because it shows the sort of mind set that we had.

You notice here all this concern about quality control. Here's [Bob] Miller--I don't even remember Miller--Miller is expressing the need for greater guidance of newer attorneys in LA and how to maintain uniformly high standards of work. Although it was generally thought day-to-day supervision of LA associates from SF was impractical, imagine even considering that. It was stressed that there was a need to communicate to the LA attorneys the various areas of expertise in the SF office.

Well, if you read this memo and think about the way the firm is run today, I think that's a gem. You don't hear anybody today saying, well, gee, we need somebody in SF watching the quality control in LA. In fact, one of the people I was talking to in LA when I was down there yesterday was saying that he felt there was a little too much mind-set of SF being the core city and that

everything had to manage from the core city. I told him, "When you're as old as I am, my guess is that the LA office will be much larger than the SF office, and at that time maybe people in the other offices will be complaining about you guys because you'll be running the show from LA rather than from SF. It's got to be run from somewhere."

Hicke: There was a big article, which you probably didn't see, in the Daily Journal about the general move to LA. It said a lot of work was going to LA and the LA offices were going to outgrow the SF offices of most firms.

Austin: It's recognition of the fact that LA is going to be the American Pacific Rim City. Since the Asia work is going to become so important, that's what's going to happen to LA.

Hicke: That's why I was interested that you said Citibank was going to establish its headquarters in SF.

Austin: I don't know why. I'm not on that anymore. Maybe the Citibank people see it differently.

Hicke: Well, getting back to the early days of the LA office, what happened next?

Austin: Let's go back to square one here. We've got DeMeules down in LA and everybody's nervous as a cat on a hot tin roof as to what Jimmy's going to be doing or not doing, and how much control we have over him and what are you doing today, Jim, and be sure and call and check with us and all that kind of stuff. As you can see from that memo, there was a tremendous preoccupation with quality control, how we could be sure that the way they were practicing law was as good as it was in SF. I haven't heard anybody mention that in quite a while.

Hicke: Well this was the first venture.

Austin: This was the first SF office to move to LA since McCutchen; I'm pretty sure I'm right on this. McCutchen had had an LA office, and that split off and became a separate law firm, because they represented Chrysler in LA and General Motors in SF and they just didn't feel because of the competitive aspects that they could remain one firm. I think we were the next firm to go to LA.

There we were. We went on account of a bank, and we sat in that bank building and if you look at the employment figures, you'll find that Jim was there by himself for well over a year. We didn't start getting other people there until later. We went

through exactly the same sort of thing that you would anticipate: we got a lot of people who are no longer with the office who were just not the high-quality Morrison types.

Hicke: Did he hire them down there or did you hire them here and send them down?

Austin: Well, I think it was pretty much here in SF.

Hicke: So you hired mostly people out of law school?

Austin: No, we were getting a lot of laterals. They didn't turn out well at all, but we were so desperate to find people.

Hicke: LA people?

Austin: Yes, but people didn't want to come to work for a piddling satellite office of a SF law firm when they could go to work for a fine LA law firm. We had a real problem at the beginning with the quality of the people who were willing to come to work for our LA office as compared to the quality of people who were willing to come to work in SF. We had a number of people in the LA office who were not of the same quality. So that really concerned us.

Now of course today it's not true. We finally got out of this mind-set that we'd only represent the bank, and then we started to get some good people, and some people like Haley Fromholz, bless him, who was willing to move down to Los Angeles; finally we got him to go, and we got some other people to go--Rick Fisher went down, and a number of other people over time have gone down, and over time they've built an office, a damn good office, and they've got some very able people.

Donna Zenor went down, Darrell Sackl went down, and many people give Darrell the credit when he was the hiring partner in LA for the huge jump forward to the point where we were getting first class people in LA to come to work for us, so that when we had a summer program, these people would go back and tell. Because that's the way this thing all works you know: these summer people go back and they tell everybody in law school what kind of a law firm you have. Finally we got that turned around in LA. But it was a real struggle, and it took time. As you can see, four years after we opened that office, the thing was not humming.

Hicke: Was it profitable?

Austin: That's one thing we've eschewed. I'm sure there are some people in the firm who probably know what the profitability of the

various offices is. But we have consciously never had figures on the profitability of offices, because we didn't want to get into that game. So I personally don't know. Now whether Carl privately gets these figures, I don't know, but he doesn't give them to anybody else if he does.

Hicke: I guess the problem is if they are not profitable that's a problem for the people in the home office and if they are profitable, they tend to break off.

Austin: Yes. And the other basic problem is that we have been very fortunate to be able to get the business started at the place which is the most advantageous from the point of view of the client without reference to who's going to get the credit for doing the work. That's one reason we have never and we certainly never will as long as Carl's chairman and as long as Bob Raven's here, we're never going to have so-called branch figures, because it's very divisive.

Hicke: What you want is an integrated feeling. I don't know what the order of the offices is, but maybe you could give me that.

Austin: The offices are as follows: SF, 1883; LA, November of 1984; Washington, January of 1979; Denver, November of 1979; London and Jeddah, Saudi Arabia, January 1980; Hong Kong, March of 1983; Walnut Creek, November of 1984; Palo Alto, December of 1985; Tokyo, October of 1987; and New York, the same month of 1987; Orange County, February of 1988. That's the progression that went forward on that.

For instance, Washington started the same way that LA did, one person. Bob Burke went to Washington. He just did a whale of a job finding office space and getting that thing rolling. He came back later and was the managing partner for operations under Bob Raven, and then for some reason he kind of soured on law practice and he went into the real estate business, and that's where he is now.

Hicke: Did he go there at the request of a client, or any particular . . .

Austin: That was our conscious decision that we ought to be in Washington. It's proven correct, because we have a lot of regulatory work, particularly in the consumer banking field. It's interesting that although, for instance, Roland Brandel is one of the foremost experts on consumer banking, I don't have any statistics on this, but I bet today more people for a wider variety of questions would go to the consumer banking team in Washington than would go to the

consumer banking team in SF, because they would assume the people in Washington were more up to date on what was going on. That may be a very unfair comment, but it's just a hunch.

It just illustrates the correctness of our decision early in the game to get into these other offices. We discussed going into Palo Alto for at least fifteen years. We should have gone far sooner than we did. In fact we should have been in Palo Alto in 1966 rather than 1985.

Hicke: Why '66?

Austin: That's when we went in with Memorex. It would have made a lot of sense. But Spitters of Memorex wouldn't let us take on other work.

Hicke: What came after Washington?

Austin: After Washington came Denver. Here's what happened there: the genesis on these things. The genesis on Denver was that our good and final oil and gas client, Reserve Oil and Gas, which as a big oil and gas exploratory company--producing company, as they say in this business--moved its headquarters to Denver. Denver was becoming in 1979 the oil capital of America. We figured well, we'd better move along.

We got there, and I guess within about six weeks of our arrival there, somebody made a cash tender offer for Reserve Oil and Gas, and boom, that client was out the window. So we were sitting in Denver with two choices: either to stick our tail between our legs and come home, or tough it out. We figured that there was probably enough real estate business in Denver to keep the office going. It has turned out to be not so strong on the business side, but a very, very active office litigation-wise.

Hicke: Mining?

Austin: No, just coming from all over the country. Then London: there were about six of these guys, maybe it was about four or five of them, that had an office in London, and they had an office in Saudi Arabia, in Jeddah.

Hicke: These are Brits?

Austin: No, these are all American boys. They had these two offices and they had a pretty good little business going, but they saw that they needed greater stability and financial support than they had;

so they went with us. So suddenly in January of 1980, we had a London office and a Jeddah office.

Hicke: Was that for a special client?

Austin: No, just because at that point we thought we'd probably get a fair amount of foreign banking work out of Crocker's London office. They'd sort of promised us that and it just looked like a good idea. This Saudi Arabia was going to be a gold mine. I'm going to talk about that next time.

Then Hong Kong was '83 in March, well we just decided that looked good, and Palo Alto--we finally came to the conclusion we should have twenty years ago: that if you want to represent start-up companies, that's the place to be. Tokyo was Fujitsu primarily at the start.

New York was a bunch of young fellows that had not made partner in some of the better firms in New York but were really very high-quality people. They were just guys that got left at the station. So that looked like a good base.

Orange County--I think those people came to us. They were with the McKenna [Conner & Cuneo] firm in LA and they were very dissatisfied, because that firm was having real problems, and they had a pretty good practice out there in Orange County, and they wanted to get with somebody that could give them some help. We're still in the business of absorbing them. Here it is two years later and even with all our expertise, it takes a little while.

I guess that's enough for today. When we come back I will start telling you in detail about London-Jeddah, because that's kind of an interesting story.

[Interview 6: June 25, 1990]###

Austin: What's on your mind this morning?

Hicke: On my mind this morning is that last thing we talked about last time, which was the London and Jeddah offices. You said that was quite a story.

Austin: Well, this all came about because there were four fellows, two in London and two in Jeddah, who had a fairly good practice. But they were anxious to get into a larger, broader-based firm, because the client base was pretty thin. They had one of these Near Eastern businessmen of a Lebanese extraction, and they had some work in Jeddah, Saudi Arabia, but that was about it. They

ran sort of a beauty contest, and there were a number of firms interested in acquiring them. We won the contest, so we got them.

One of the reasons that we had been interested in this was because we saw an opportunity to represent the bank in its London office, which was getting more aggressive in its lending, and we saw this as a bridge to getting into the international banking business, not only for Crocker, but for other people, hopefully in the future. So we picked them up.

When I went to the London office, which I did in February of 1980, things had sort of started to heat up in the Jeddah office. The problem was this: along with all our commercial work, the British Embassy had asked our firm, particularly our Saudi sponsor--nobody practices in Saudi Arabia without a Saudi sponsor--

Hicke: You mean a government official?

Austin: No, generally speaking, the person has some religious relationships, because in Saudi Arabia, the law is the Koran, so it will be somebody who is skilled and versed in the Koran who becomes a lawyer in Saudi Arabia. We had a very marvelous guy as our sponsor, Mujahed. He had been asked by the British Embassy to represent this woman who was accused of adultery. Now in Saudi Arabia there's only one kind of adultery and that's a woman's. Men don't commit adultery, just women.

Hicke: Was she an American?

Austin: She was British. She was married to a British doctor, and this doctor this particular night had been on duty in the hospital, and his wife gave a cocktail party. Of course everybody knows that in Saudi Arabia the official policy is that liquor is forbidden, because the Koran speaks rather freely against it. But nevertheless, she gave this cocktail party, and there was a lot of booze.

Two of her guests, one male and one female, apparently disrobed and became enamorously engaged. They fell off the balcony onto the village square and were instantly killed. As the police came by, they found these two naked bodies of Europeans in the village square, and they rushed up to the apartment, and they asked who was responsible. They said who owns this apartment, and this lady came forward and they said, "Well, you must have been responsible for these people falling off the balcony." She said, "No, I couldn't possibly have been, because I was in bed with Charlie,"--not her husband.

So the first thing she knew she was found guilty and convicted and very swiftly. The penalty for adultery in Saudi Arabia is being led to the village square and being stoned to death by the populace. This was the point at which Mujahed was brought into the act. He got the sentence reversed to fifty lashes in the public square on a bare back.

Now that sounds pretty horrendous too, but you have to understand these lashes are administered with the Koran under the arm with which you're doing the lashes, and it's pretty hard with a book under your arm to get much leverage. So it would be more symbolic than anything else if it occurred. Still, I imagine it would hurt.

Mujahed worked a little harder on that one, and he finally got them to give up and agree that if she left in the dark of night, she and her husband, and never returned to Saudi Arabia, why that would take care of the situation. That's what happened.

Now, when I got down to the Saudi office, her husband would periodically come in, and he would have a breath on him that you could hang your hat on. In other words, he must have been a pretty heavy drinker too. Well, that was the most exotic thing that we ever did in the Saudi office. The office was a real money machine, because we were the only American firm in Saudi Arabia at that time with a pretty established reputation for banking and commercial expertise.

Hicke: Who were your clients?

Austin: All kinds of people; people going in to do business in Saudi Arabia and Saudi Arabians trying to take money and do business outside. A lot of it was bank loan agreements and things of that kind.

Because of the very restrictive nature of the opportunities for women, for instance, our secretaries, who were American women, had to wear long sleeves and long skirts. We'd bring them in by a private limousine about 7:30 in the morning and escort them out when it got dark.

It was very restrictive, and women in Saudi Arabia would have to be very, very circumspect because otherwise they would assume you were a whore if they saw you out on the street all by yourself. These things didn't sit very well with the firm, so finally, even though this office was very profitable, we gave it up, because we just couldn't for a variety of reasons work out the commercial side of it and also this ethical side of it.

Then, we were left with the London office. As long as we were representing the bank that was kind of a flourishing thing too. But then when we lost our banking connection and before we had built up a Bank of America connection, things were pretty slow in the London office. We got down to one lawyer, and it was pretty much a mail drop operation. To be honest about it, most of the major firms who have offices in London, with one or two exceptions, don't do a great deal of work, anywhere near the amount of work that they do for instance out of their Paris offices. Now I don't know why that is, but that's the way it is.

Hicke: Competition from the British?

Austin: No, not particularly, because it's a very clear line as to what an American lawyer can do in London. He can't be a solicitor; he's got to practice international, American law. He can't give opinions on British law; you have to have a solicitor to do that.

Now, of course, with the common market opening up and because we've gotten some other rather significant clients, why the London office is alive and well, but many times during its ten-year span, it was teetering on the edge. I think it's here to stay now. Anyway, that was the so-called caper, and that's the only time we ever closed an office that was economically feasible. As a matter of fact, it was the only time we ever closed an office, to my knowledge, except for one little minor one out in Woodland Hills.

Hicke: I was going to ask you about that one. That was in the San Fernando Valley?

Austin: Yes. Well, we had one fellow who is no longer with us who was out there, and he got a few interesting clients, but it didn't develop the way the other offices have, so it sort of petered out.

Hicke: I want to go back to Jeddah for just a minute. How did Mujahed get this person off?

Austin: It was in the Saudi Arabia court. He went in and argued this case and convinced the judge that this was the way it should go.

Hicke: Was it on the basis of the fact that she was not a Saudi Arabian? I'm just wondering how the international laws applies to a person living in another country.

Austin: As far as the Saudis were concerned, they had jurisdiction over her because she was living in Saudi Arabia; she was subject to their law. She got out of it by plea bargaining. Mujahed was

able to convince the Saudi authorities that this was a more appropriate way to go.

Hicke: It probably would have caused an international incident?

Austin: Well, it would have certainly not improved the relations between Great Britain and Saudi Arabia if they'd killed her or beaten her on her bare back. It was kind of interesting: when I was about ready to go down to Saudi Arabia, there was a movie that some people saw in the United States called The Princesses, and this movie portrayed the daughters of the ruling families in Saudi Arabia as living a rather high and mighty life, not quite the veiled type of life that one would expect a Saudi woman to live.

The Saudis had never seen this movie, but they were very upset by what they heard about it. People thought that maybe if they saw a copy of it, they'd realize it wasn't as bad as they thought it was. At one point there was a suggestion--I don't know how seriously it was made--that when I went down to Saudi Arabia I take a copy of the film with me. Well, we never got to a point where I had to make a decision on that, but my days for that kind of stuff were over, and I don't think I would have taken the film down, if I'd been asked.

Hicke: Was the firm involved in this controversy?

Austin: No. They weren't involved in that particular controversy.

Hicke: What was your trip about?

Austin: My trip down there was to see what was going on in the Saudi office. We had this London office, we had just gotten them both, and the fellows back here wanted somebody that they trusted to give them a good look and report back. That's why they sent me to London. Well, I guess it was also to give the London people the feeling that the firm really cared. I didn't do anything; I just was there. But anyway, that's why I went down to Saudi Arabia in March of 1980.

It's impossible to describe the restrictions on women in Saudi Arabia. For instance our sponsor, Mujahed, had studied in the United States, and his wife had taken courses at Harvard. Of course, when she was in the United States, she wore blue jeans; she went around like anybody else.

In Saudi Arabia, we took her to dinner one night and this was the first time she had ever had dinner in a public restaurant in

Saudi Arabia. She lived in Medina, which as you know is one of the religious cities; it is about fifty miles from Jeddah, and Mujahed would commute in every morning. She came to dinner with a veil on and yet she came to the firm retreat one year wearing her blue jeans.

She was telling us when the ladies go to London, they get into the European garb, and then coming home on the plane, when they're about an hour out of Saudi Arabia, they go to the restroom and get on all the hoods and cowls and everything else. For a women in Saudi Arabia, at least ten years ago, the only opportunities available were hospital work and this bank that they started--a women's bank--and to a certain extent in the educational field.

The thing that I found so extraordinary, was one day I picked up their five-year plan, the Saudi five-year plan, and one of the key elements of this plan was the education of women. You wonder what in the world they think they're going to accomplish educating women if the only thing women can do is get a job with this bank or work in a hospital or maybe do a little teaching, and under very restrictive conditions.

That's enough about Saudi. It was a very interesting experience, and it certainly gave me an idea of what kind of life a woman has in that kind of county.

Hicke: Not much of a life for a law office either if they have to hire American women.

Austin: Well, I'm sure there are other people in Saudi now and that they've reached accommodations one way or another, but it just wasn't for us. We're not going to have a place where a Jewish partner of ours would feel uncomfortable going. We didn't like very much the fact that we couldn't send a female partner over there. Now that we have as many female partners as we have, we don't want to do business where they're not able to practice just like everybody else. It was an experience, but we feel we are well out of it. That's my view of why we closed the office; Carl [Leonard] has a different view.

Hicke: I think we covered most of the other offices. Was there anything special about Tokyo?

Austin: Well, now I don't know very much about Tokyo, because I wasn't involved in that. I think you ought to talk to Carl and Preston Moore and Bob Raven and Dave Nelson about the Tokyo office. In

fact, I've never seen the office, and I don't know anything about it.

Clients and Practice Areas in the 1970s

Hicke: In the 1970s I think there was starting to be increasing foreign investment in California real estate. Can you tell me a little bit about how that affected the firm and your practice?

Austin: Well, one of the significant events in Morrison was--and Noel Nellis was the spearhead of this, because he's the head of the real estate department--you can get him to tell you the story of the growth of the real estate department--but one of the things that he and his department have developed is this tremendous practice of advising offshore investors in California.

This has been a very, very substantial practice and one that certainly this firm has been in the forefront of in relation to other firms in the United States. That's due to the fact that Noel took this whole branch of the business department over and really developed it and got some good people in there and they got a very fine operation going.

You see the synergism is that you've got Hong Kong and Tokyo people coming into the United States wanting to invest their money, and real estate has been one of the attractive investments for these people. This is what Noel's department has been in the forefront of in the country in terms of advice and counsel to this kind of people coming into the United States. You have to realize that thirty and forty years ago, real estate practice consisted of writing leases and drawing deeds, and it was a dull, humdrum sort of thing, and that's not true now. These are very sophisticated, complicated deals that these guys put together.

Hicke: Another thing: I ran across a memorandum that you wrote in the '70s having to do with a probate and estate planning practice, which you have told me was a very small part of Morrison & Foerster's work.

Austin: And it's even a smaller part now. I really couldn't tell you why that part of the practice hasn't grown. I guess one of the answers is that so many people today have these living trusts, but they still have to have estate planning and tax advice. The accountants spread themselves so extensively into the tax fields that many people never get to a lawyer for tax advice, and there

are other people who give testamentary advice as to how to put your assets out. For one reason or another the probate and estate planning, although the partner we have is considered one of the best in the business, Dick Kinyon, for some reason it just moves along at a very modest pace. These memos were because at that time I was hopeful that we could do something about it and get out and get this thing expanding the way the rest of the firm was expanding. Well, it didn't happen.

Hicke: That's probably because it was happening generally all over?

Austin: I don't know.

Hicke: Speaking from a management perspective, what do you do about clients that you don't want?

Austin: Well, if you don't want them . . . I've had occasion to kick a client out of the firm. You call them up and say you're through. Don't come to us for anymore advice. I had a fellow in the oil and gas business named Jimmy George--and this was years ago--and I thought that Jimmy was playing a little too close to the line, and he wasn't being honest with me. So I just told him, you get out. He came back on his hands and knees about a couple of years later, and I relented, and we did a few things for him and then he kind of drifted off. He's no longer a client. But that's what you do. It doesn't happen very often, but on occasion it does. Now, of course, it might happen as a result of a technical legal conflict; that would be different. Then you'd simply be saying, "We can't represent you because of some other representations that we have." I'm trying to think of anyone else that we actually kicked out.

Hicke: Have you turned one down?

Austin: I can't think of anyone in my personal practice, but that's a good question for you to ask the other people: Bob Raven; ask Carl Leonard.

Corporate Counseling

Hicke: Now a couple of questions on counseling corporations. In antitrust work the corporation really has two opponents: the competitors and also the government.

Austin: That's right, so it's two different things. It's either a Section 7 case by the government or its could be a Section 7 case

by a competitor. One of the interesting things in that regard in our firm is that many years ago we decided--and certainly the fellows who took things over in the '60s perpetuated this point of view--that the people who try the antitrust cases should be the primary givers of antitrust advice.

Now that isn't true in all law firms and it wasn't true initially in Morrison & Foerster. Mr. Foerster used to give antitrust advice to his clients, and I guess Judge Holloway gave it to his clients. But we, the new team, decided that this advice should be given in our firm by the people who have to try these cases, that they have a surer sense of where the law is and where the practicalities are. So although there may be some deviations by partners here and there, that still is the policy of this firm.

That was always the policy that I followed. If one of my clients asked an antitrust question, the first thing I would do was to get Archer or Raven or [Mel] Goldman or somebody like that involved.

Hicke: . What about preventative medicine, so to speak. Perhaps you saw some problem that might be coming up?

Austin: Or if they saw some problem. We'd do the same thing. For the whole area of antitrust in this firm, the trial lawyers have the exclusive responsibility for everything except the most simple antitrust advice.

Hicke: And that was your's and Bob's and Dick's policy?

Austin: Yes.

Hicke: If you've got a conflict within a corporation, between the CEO and the stockholders, whom do you owe your loyalty to?

Austin: We would owe our loyalty to the corporation--that is, to the management of the corporation. Somebody else would represent the stockholders if they had some particular beef, generally speaking.

On the other hand, we might be asked by a group of stockholders to take up a complaint they had with the management of the corporation. It would all depend. But I'd say generally speaking, we're on the side of management, normally. We're on the side of management, because in our corporate practice we're representing the corporation and the corporation obviously is being headed by the management of the corporation and the board of directors; those are the people we represent.

Hicke: What about giving a client a little more in the way of business advice. Not just legal advice, but . . .

Austin: Well, you know that's a very hard and individual call. Some clients will respect any advice you give them, whether it's business or legal, because they trust your judgment and your common sense; but I don't think you can lay down any black-letter law as to when you do one or when you do the other.

Hicke: But you don't hesitate to do that if they ask you?

Austin: No, it's a very individual thing. Sure I hesitate in some circumstances and just say, "Look, I'm a lawyer I'm here to tell you what the law is, not what the business thing is."

This is one of the reasons that I got out of the business of being a director, because there is a dichotomy between giving business advice and giving legal advice, and it seemed to me that we ought to stick to our knitting and give legal advice. It would be a rare case . . . perhaps if you have a very close relationship with somebody. I had a very close relationship with Emmett Solomon. He was the head of the bank for many years, and I guess we strayed over the line on numerous occasions. My view is that in 99 percent of the cases, a lawyer ought to give legal advice and stay out of the business advice.

Ethics

Hicke: Next topic is ethics. Many people say that you're really very generally responsible for the firm's strong ethical code, and I wondered how you pass this along. Obviously setting an example is one way, but are there other ways to pass this feeling along?

Austin: I think that's been a hallmark of this firm long before I was with it.

Hicke: Maybe the people today look back and . . .

Austin: Well, no, I think you're using the wrong term. It's core values. As I said in this little piece that I wrote, I've always been of the view that a lawyer first and foremost is a lawyer because he wants to be a lawyer; he likes the law. He doesn't get into the business because he thinks he's going to make a lot of money. There are a lot of easier ways to make money than being a lawyer. That's the professional aspect.

This firm takes a great deal of money out of the community. It has a gross annual income of \$150, \$160 million dollars, something like that, so in my view and in the view of others in the firm, if you take that much out, you put something back. That's really the genesis for the underpinning to our strong commitment to pro bono. Mr. Clark is responsible for that--if you want to call that an ethic--being established in this firm, and all that the rest of us did was to enhance it and keep it going. He started it. The third thing in my view is that if you're going to get married and you're going to have kids and have a family, there's no point in having a family if you never see them. To me the core values in this firm center around the fact that you've got the firm, you've got the practice and you want it to be the most professional and the best in the business, you've got a very strong and loving commitment to your family. Now, it's damn hard working these three things out, but you can do it if you put your mind to it. All of us have.

If you were to take the number of partners we have now, what is it, 175 something like that? I don't know how many of those people today happen to share those views, but that certainly was the view of the people that turned the firm around and got it going in the direction it's going now. Carl Leonard is a passionate exponent of this kind of view, which is very fortunate for the firm, because we are different. Now you ask me if this is going to continue? I don't know. One day Carl Leonard is going to step down; will his successors have the same views? I don't know.

Pro Bono and Community Activities

Hicke: You mentioned pro bono, that's the next big thing I wanted to ask you about, but I wondered if you could also tell me as much as you know about Mr. Clark's and Mr. Hohfeld's?

Austin: I don't know what Ed Hohfeld did in the pro bono field. But I'm very clear about what Mr. Clark did, because Mr. Clark and one of my old bosses in New York, Mr. Tweed, became associated in the American Bar Association. It's very easy to oversimplify these issues, but I think you can safely say that those two men were as responsible as anybody in getting the Legal Aid Society as an institution established across the country and particularly in San Francisco and New York, where Messrs. Tweed and Clark were respectively. Mr. Clark felt very strongly about this, and I'm sure if he were here today, he would have absolutely the identical

point of view that I've been expressing about core values of the firm.

Now, whether the other old-timers would, I don't know. I don't know what Mr. Hohfeld's attitude about that would be. After all, he did a lot in the charitable field with Mr. Morrison's money. He did a hell of a job. I guess when Morrison died, the trust had a million dollars, and I think Mr. Hohfeld spent about \$20 million, and when it came time to shut the trust down, he had to work like hell to get the damn thing spent so that he could meet the deadline when it was supposed to end. But I don't know about what he did on a pro bono basis.

Of course, you take some of the very strong leaders of the firm today . . . I've try not to use names, because we like to think these things are group activities. But certainly there are a number of people, both on the business and the litigation side, who are very strong and influential partners who feel very strongly about this. Of course, there are always those who worry that we're spending too much time on pro bono, but so far they haven't had the reins.

Hicke: The first thing I have for you is as a member of the board of directors of the Bar Association of San Francisco. Was there something before that I don't know about?

Austin: Well, my pro bono work really started in the Community Chest here in SF. A friend of mine got me into the Community Chest and by osmosis or otherwise I became chairman of what was known as the Group Work and Recreation Cluster of Community Chest Organizations. Those were the settlement houses in SF. I got very much involved in the settlement house movement, and I became president of one of the settlement houses here in SF, and then at a later date I became president of the National Federation of Settlement Houses and Neighborhood Centers--the Helen Hall type of thing. That took a fair amount of time. Then I was on the Berkeley Personnel Board, and later became chairman of that committee. The Berkeley Personnel Board used to set all the salaries in Berkeley except for the one unionized element, which was the garbage people or maybe it was the maintenance people; it was one very strong union and that was it. All the rest of the salaries we set.

Hicke: This is city government you're talking about?

Austin: That's right. The Berkeley Personnel Board was the first board in the county to break the starting salary of a policeman and a fireman. Historically, they were always the same. For instance,

when I first went on the Personnel Board it was \$616 a month. They sort of went up together; the police and fire department made the same amount.

We broke that, because we felt that the policeman walking the block the way he did at the time we broke it had a much wider range of discretion than a fireman who was always working with senior people.

The pro bono things I did were city government, settlement house work, and the Bar Association. I went on the board of directors of the Bar Association of San Francisco; I was chairman of their corporations committee.

Then in 1960, Sam Stewart, who was the general counsel of Bank of America, and who was the chairman of what we now call with Business Law Section of the American Bar, dragged me sort of kicking and screaming into this Business Law Section, because I didn't have too much respect for the American Bar Association and I figured it was just a hell of a waste of time.

Hicke: Why didn't you have respect for it?

Austin: Well, I just thought those guys were a bunch of politicians. I didn't know very much about it, but from what I knew I didn't care very much about it. So I went into this very reluctantly, but they put a lot of pressure on me because Sam--when he wanted somebody he knew how to do it. He went right up to my senior partners and he said, "Now, it would be much to your advantage if Austin gets on this" The implication being it would be very much to our disadvantage if he didn't. What can you say? So I went in.

The interesting thing is just on the purely friendship side: of the close friends I have today that I have made in the last twenty-five years, most of them have come from this bar association group. For me it was a marvelous thing. Sure, it was good for the firm, because I met the general counsels of the life insurance companies, that's how we got that business, and I met some other people, so it was good for business, but for me personally, it was an opportunity to rub shoulders with some very, very able lawyers and fine people and I really, thoroughly enjoyed it. So I'd say, if you want to say what was Austin's pro bono effort, it was the bar work, the settlement house work, and my work in the city government. Those are the basic things I did.

Hicke: What specifically did you do in the bar association?

Austin: I became chairman of the then biggest section in the ABA, which Dave Nelson has just finished being chairman of. I kind of took Dave along, got him started, and he did the rest. I came by that naturally, because everybody in my family has always had a very strong commitment in the public service area. My father was a president of a major bank in New York, yet he always found time to do these things; so in our family it was just kind of a tradition. It happened to coincide with the feelings of the people here, so I was lucky--Mr. Clark and those guys.

Retirement

Hicke: Or they were lucky. If you think we've covered everything else, let's get up to your retirement.

Austin: Now getting into retirement, as I say, the first given on this is that this firm is very atypical. They have been extremely generous to me. I really mean it. One of the things that makes my situation different from anybody else's is because of these hiring practices. You see, I'm 76 years old. Now the next oldest person in the firm is the first guy I hired; that's Bob Raven, and Bob is probably 67 years old. He's nine years younger than I am.

I didn't have a crowd with me, I've always been by myself, so when they got to working on a retirement plan, I became the first either beneficiary or victim. It's important to keep that in mind, because as time goes on there are going to be people going out nine, ten, and eleven at a crack; it's going to be a different thing.

The first thing they thought was, well, we've got old John and he's now of counsel; what are we going to have him do? What should he do? Well, actually for the first year after I went of counsel, I sort of backroomed a lot of the major clients. For instance, I'd do loan agreements for the bank and things of that kind. But I purposely told all my clients, don't call me, call so and so. They respected that, but in a sense it was almost starting all over again working for other people.

I did that. Then they sent me to London, and I came back and I sort of resumed my former ways. Actually, the first summer that we got back from Europe, in 1980, Wilcox, who was then the CEO of the bank had decided that he wanted to form an association with the British bank and get them to provide a lot of capital for the Crocker Bank so that Crocker could step into the big time. He

wanted me in that negotiating group. So I did that. There were very able people on that team: Dave Baudler and Larry Silberman, the inside guy; he's a pretty good negotiator. I suppose they could have dragged Marshall in, but anyway, Wilcox wanted me front and center, and when they went to New York and negotiated, I went with him.

I guess the last really legal engagement that I had for the firm--and it really wasn't for the firm, it was for my own account, because we felt I had to be independent from the firm--was when the Brits wanted to buy out the stockholders completely of Crocker, I represented the outside directors, who had asked that I represent them.

Hicke: Separately from the bank?

Austin: Yes. The bank had by that time an inside general counsel; also it had people in Morrison who were doing bank work. I was just representing the directors. I gave them the opinion that in my view they had discharged their responsibilities in a proper manner, and that's really the last legal thing I had.

Now back to the firm. That's when I started getting into this business of the firm history--going around talking to various offices about it.

Then I wasn't really doing anything and in 1988, I was having lunch one day with Carl, and I told him, "I'm just getting bored as hell, and I think I might want to get out of this business and do something else." So Carl said well, okay. The next thing I know, he's appointed me as chairman of the Conflicts Subcommittee. This is just one of the big burning issues in the firm now. The reason he asked me to do it was because I am so much older than everybody else and everybody would realize that I was probably the one person without a hidden agenda, because I'm not practicing and my take in the firm isn't depending on this move or that move.

I did that for a year and a half, and now I've turned the chair over to Bruce Mann. So, today, my retirement activities are now limited to this hurrah, summer associates and the new associates, talking to them about the firm. I do that both for the summer associates and then in the fall when the new associates come. I serve on the Pro Bono Committee, on the Risk Management Committee, and the Conflicts Subcommittee and the Opinion and Practice Review Committee. I can do that by conference phone. For instance, I'll be up at my place in the country for the entire month of July and I'll have all four of those meetings, but I'll just hook them in.

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Austin: Austin's activities in Morrison & Foerster would gently and slowly sort of slide down the slope, as they should. Because I honestly, and this is not being just overly modest, I just don't believe that people 76 years old should have positions of responsibility in business organizations. It's just too damn chancey. You never know when someone that age, when their judgment is going to go. So anyway, that's the story of John Austin.

Hicke: Well, not quite; now I know that you do some arbitration work and some special . . .

Austin: Yes, you want to hear a little about that? Well, that's a big ticket item for me now, sure. I got into the special mastering because my good friend Judge Orrick, who has been one of my close friends for years and years, had a number of cases that as a judge, he just didn't have time to try and settle. He felt that somebody ought to take a crack at it, so he started . . . well, I'll give you an illustration of some of the ones I've done for him.

For instance, the Children's Hospital in the East Bay had had an employment discrimination judgment slapped on them. It was very important that somebody had to monitor this. Somebody had to get over there and get to know the operation of the hospital to be sure that the consent decree that they'd entered into was being abided by. So, I did that.

He also gave me a case involving the city of Richmond and policy brutality. There were 126 cases of these cases that he wanted me to resolve. I'd never had anything to do with the police. These guys show up here in the conference room and they've got their guns, and I told them. "The first thing we're going to do here is you're not packing any guns into this room. If you want to wear your guns here, you'd better bring a third person and he can hold them, because you're not going to have them in my room. I'm not going to have any intimidation like that."

Well, I tried three cases of these cases of police brutality and I found for the complainants in two of them and for the police in one. Then I went to these lawyers and I said, "Now you've had a chance to see how I'm looking at these cases. We could go through 126 more cases if you want to, but I think this ripe for settlement." Sure enough they settled it.

Then, I've had a number of commercial cases. I had a case involving American Airlines: some of their employees, the women,

felt they were being discriminated against. I helped the parties to settle that case.

Now, I'm sure that my brothers in heaven in the litigation department would not agree with the statement I'm about to make, but I firmly believe that business lawyers in many instances can settle cases better than litigators. Litigators are gladiators. In any event, I've had for Orrick over the years an amazingly successful track record in settling these cases that have been kicking around the courts.

The last one I had involved a guy named Syufy, who has all these movie theaters down in the San Jose area, and he was accused by another fellow exhibitor of antitrust practices, and I had them up here in two rooms and I'd go back and forth for a couple of days and we were able to work out a settlement.

Hicke: You spoke with each side individually, never got them together?

Austin: Yes, sometimes I speak to them all together, but there always comes a time when I put them in two different rooms, because then I can rally talk business with each side. I finally got to Syufy; I said, "Mr. Syufy, this is the simplest thing in the world. You have one of the best antitrust lawyers in the State of California representing you. Max Blecher is right in there and he can tell you how much it's going to cost to try this case, if you win on a summary judgment basis. You don't have any idea of the drain on time and attention if you're in a lawsuit. So you ought to pay the plaintiff" I forget what it was, \$250,000. Finally, Mr. Syufy agreed and they settled this case, and this case had been up there in federal district court ten years.

The other thing is there are really four other sources of arbitration work for me. The federal district court also has a rule that any case that involves a prayer for relief of \$100,000 or less automatically goes to arbitration. So you get a certain number of those cases. The state superior court has a similar rule for a lesser amount. And then, as I like to say, my third source of business is the American Arbitration Association. My fourth and last is private parties. If someone wants me to sit on a commercial arbitration matter, as a matter of course we're going to run a conflicts check, because I take the position that I'm still in Morrison; so a lot of times for good cases I have to say I can't do them because of the conflict. That's what I've been doing.

Now as I start tailing off, next fall, I'm going to get actively engaged in the Bessie Carmichael School reading program.

This firm has a commitment to the Bessie Carmichael School. My secretary, Polly [Asuncion] helps over there and I'm going to be going over there and reading. So that will be my big ticket item in the fall, besides going to Australia in October.

Hicke: Are you going to do the Milford Track again?

Austin: No I don't think I ever will because my wife--it's a wonderful walk--and she's a damn plucky person to have to stick around with someone as harebrained as I am, but nevertheless, I just don't think she'd feel comfortable doing it again and I wouldn't want to do it without her, so that's the answer to that. I think New Zealand is just terrific.

Then I'm kind of looking around to see what other activities I might engage in that might be not necessarily related to law. I firmly agree with our chairman, Mr. Leonard, that to the extent that you keep active mentally, you're more likely to stay active physically and therefore, you're more apt to not get your shoulders hunched and get to be old.

Hicke: One of the activities you can plan on is looking over your oral history transcript to make sure it says what you want to say.

Austin: I think the essence is that Morrison is a very unique place and it's a unique place because of the people who are in it, giving major credit to Carl and the other leaders. It's that simple.

Hicke: How did you know that was going to my last question? You've told me many, many things about why it's unique but I planned to ask that one last question.

Austin: Carl Leonard is the best chairman this firm has ever had. I know something about this, because I was chairman of the Management Committee myself at one time and he combines the high moral plane, the shrewd business judgment, the compassion, and yet Carl can be very tough and direct, but he's a leader. He has to put up with a lot of BS, because people are mean and narrow, some of them, so he does have to put up with a lot of nonsense, but he's up there on the high road leading the firm on a high plane.

Hicke: Just before we end on that excellent note, I want to go back and fill a couple of holes. Could you explain what mastering is?

Austin: Special mastering can mean a variety of things. What happens is that the judge appoints you a special master; they're appointed for a variety of things. For instance, maybe you'll have a very complicated dispute involving royalties or some other thing where

somebody is going to have to carefully go through records and straighten everything out. The judge doesn't want to do that, so he'll appoint a special master to do that fact-finding. The most prominent thing that special masters do is fact find. What Orrick has done is to kind of enlarge on that, and he's got his special masters doing more than fact-finding. They're forcing people to make decisions that get the case off his back. That's the way that works.

Hicke: Are there special ways to qualify as an arbitration person?

Austin: Anybody can sign up on the state and federal district court programs, as far as I know. If they are willing to accept the modest remuneration that they receive for doing those things, why fine. It gets a little more complicated on a special master; then the judge is looking for somebody who has a reputation in the community, and when you get on the American Arbitration Association list, which has a lot of very able people on its panels, they don't give somebody a name, they give somebody a list of names. Then the two sides pick people from that list. I can't think of anything else on that.

Hicke: I want to go back to what you said about the business lawyer's viewpoint being a good one to have in arbitration. It sounds like you think that perhaps the adversarial system which our courts have is not maybe the best way to go?

Austin: Well, no, it's just that business lawyers are always looking for solutions that require accommodation, whereas a litigator is very often given no opportunity to accommodate, the parties won't hear of it, so his job is then to plow ahead and win for his side. Whereas the essence of business practice is obviously negotiation, because there is no such thing as involuntary mergers. Very few. Sure you could have a hostile tender offer or something like that, but most business is a matter of accommodation and most business law is a matter of accommodation. Ask Bob Raven the same question and get a litigator's point of view.

I believe that about winds it up except for a few closing comments.

In my view the pro bono core values of the firm were basically in place when I arrived on the scene in March of 1946, thanks largely to Mr. Clark. People today would do well to remember Mr. Clark's taking on the highly unpopular Vivian Kelhams case and the enormous fight Girvan Peck put up in the '50s to alleviate the McCarthy hysteria. What I find most encouraging is that, despite the growth in the firm and the greater pre-

occupation with bottom-line performance, the younger as well as the older leaders in the firm appear to maintain a strong belief in what have come to be our basic values. It tells me that we are paying attention to that sound notion in our hiring practices of treating as the crown jewel the last person hired.

As I have indicated, law, as practiced from 1883 to roughly the end of the 1940s, didn't change much despite technological advances such as the advent of the telephone, the typewriter, etc. But the economic expansion of commerce and the growth of litigation to resolve disputes which burst out in the 1950s caused firms, wishing to remain in big firm practices, to expand much as their clients were expanding. Many firms across the country were alert to this change and expanded accordingly; Morrison was not and Morrison had to play the hard game of catch-up in the 1960s and 1970s. We came mighty close to following in the Chickering and Gregory collapse pattern. Fortunately, we saw the light just in time, ate the grass for a number of years, and I suspect from now on you will find Morrison leaders peering hard into the future. I must say I am very proud to have worked in this firm.

Hicke: Okay, I think that does it.

Austin: Well, it was fun working with you.

Hicke: Thanks very much for giving us this oral history.

Transcribing done at Morrison & Foerster.
Final typing by Andrea Carter.

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FIRM HISTORY

I have been asked to say a few words about the history of our firm. I started with Morrison, Hohfeld, Foerster, Shuman & Clark in March of 1946 when it was a locally-respected San Francisco law firm. The firm had been a going concern in San Francisco for 63 years prior to that date. In the main, this talk covers the forty-six-year period from 1946 to 1992.

In 1883 an older Thomas O'Brien and a young Alexander Morrison formed a law partnership, "O'Brien & Morrison". That firm is the lineal ancestor of the present-day "Morrison & Foerster" and "Brobeck, Phleger & Harrison" law firms. Between 1883 and 1975 our branch of the original law firm had fourteen name changes. In 1892-93 and 1894-97 the firm name was "Morrison & Foerster," and in 1908-1910 "Morrison & Brobeck." In 1975 the partners decided to shorten the firm name and "Morrison, Foerster, Holloway, Clinton & Clark" became "Morrison & Foerster." This was a healthy move. While today most large law firms throughout the country have institutionalized their firm names, this was not always so. I can well remember the pride of senior partners when their names went in and the heartache of those who missed out. That is one exacerbation we are well rid of.

I have heard from men who practiced with him in San Francisco that Mr. Morrison was a sound and careful business lawyer who enjoyed a fine legal reputation. Since many of his most productive years fell in the days before we had an income tax law, he was able to amass a good-sized fortune which he, and later his wife, generously gave in large part to charitable causes. The Morrison Planetarium is an example of his and his wife's generosity. The Morrisons had no children, but two brothers, who were his first cousins once removed, later became partners in the firm -- Hart and George Clinton.

By the time he died in 1921, Mr. Morrison and his partners had built a fine corporate practice. He must have been the stabilizing influence in the firm because at year-end 1924 differences of views among the surviving partners led to the dissolution of the firm, then styled "Morrison, Dunne & Brobeck", and the formation of "Morrison, Hohfeld, Foerster, Shuman & Clark" (the Morrison name going with the Hohfeld group with Mrs. Morrison's blessing) on the one hand and "Brobeck, Dunne, Phleger & Harrison" on the other. When I came with the Morrison firm in 1946, memories of the events surrounding the dissolution were still fresh and there was even then no love lost between some of the seniors at Morrison and some of the seniors at Brobeck. Whatever hard feelings existed between those participants in the

dissolution, the partners of the two firms today, in the main, have a high professional regard for each other.

Mr. Hohfeld, the oldest partner in the Morrison, Hohfeld firm, is said to have financed its early operations after the 1925 split-up. Apparently, as Mr. Hohfeld sought to win over clients of the old firm at the time of the split-up, Mrs. Morrison's intercession on his behalf and her decision to have the Morrison name go with his firm, turned out to be a critical factor in the decision of Mr. Crocker for the Crocker Bank and Mr. Spreckels for the Spreckels Companies to choose the Morrison, Hohfeld firm as their lawyers, and this was perhaps true in the case of other clients. In any event, it must be regarded as a strong reflection of the high regard the business community had for Mr. Morrison.

The Morrison, Hohfeld firm continued its share of the former firm's general practice. During the depression in the 1930s, the firm was active in a number of bankruptcy reorganizations, particularly in the hotel field. These professional opportunities often stemmed from the fact that Mr. Hohfeld served on a number of bondholder protective committees. During the depression the firm had the good luck to probate one of the largest estates (Spreckels) ever probated in California up to that time.

During World War II, as was the case with so many similarly situated law firms, the Morrison firm was terribly overworked and badly understaffed, but somehow they made it through to the post World War II era when returning veterans and law school graduates made it possible once again to have an adequate legal staff.

By March of 1946 the Morrison firm had ten partners and eight associates, and the firm was not to change significantly in size for another 15 years or so. The partners in those days were divided into proprietary senior partners who owned the firm's assets, including receivables, and non-proprietary junior partners who merely shared in the firm's net income. This distinction was done away with in the late 1950s.

In 1946 the firm occupied the 11th floor of the old Crocker Building and had its library on the 5th floor. When I arrived in 1946 there were no spare offices, so I made my office in the library for the better part of two years. Shortly before I arrived on the scene, the firm, with due deliberate speed, had admitted as a partner a man approximately 20 years in harness as an associate.

The entire staff then consisted of a receptionist, a pink-cheeked and excitable young woman of Irish extraction named Miss Murphy; a Time Notes clerk, Miss O'Toole; a telephone switchboard operator, Milly Costello; a file

clerk, Miss Putnam; and one bookkeeper, a callow youth named Les. In those grand old days before we had direct long-distance dialing Milly was the keeper of the keys. She had a memory like an elephant and could remember not only that you had called Cedar Rapids three years ago, but, more importantly, the man's name and telephone number!

Stenographic assistance came from a small pool of typists jealously guarded over by Mrs. Lewis who had a proper contempt for feisty young lawyers. Ten copies of all documents were typed using carbon paper and our first duplicating machine, called hectograph, produced purple ink copies which we discovered to our horror faded if exposed to daylight, making it a useless process for execution copies.

Time Notes were kept but very minimal use was ever made of them as we billed for "the reasonable value of our services", that is whatever the billing partner thought the matter merited.

Senior partners could be approached only by passing the guard station of the senior partner's secretary, a far more influential person than mere junior partners!

Firm management rested day to day with Judge Holloway as managing partner; I suspect Judge touched base with Mr. Clark and Mr. Foerster now and again. In my early years as a partner you wouldn't have believed there was such a thing as group firm management. Our regular Tuesday

partners' luncheons around a small circular table at the Bohemian Club were civilized, leisurely, sometimes interesting, sometimes amusing, with the discussion conducted for the most part by the older partners. Firm business was seldom discussed at these meetings. Budgeting firm income and expense was unheard of at that time.

In 1946 the firm had a well-diversified mix of corporate clients, the firm's principal clients being a bank, a sugar, transportation and related interests conglomerate, a manufacturing conglomerate, an independent oil-producing corporation, an outdoor advertising concern and a bankers' association. The firm also had a vigorous labor law practice (unusual for a corporate-oriented firm of the Morrison type) and a flourishing estate, tax and probate practice. In those days none of the Morrison partners (except perhaps the partner most heavily engaged in tax matters) considered himself a specialist and, as a result, each partner did pretty much what came his way, and the same was true of the associates. For firms of the size of Morrison in the late 1940s, the day of departmentalization and specialization had not yet arrived.

Old customs and habits continued to prevail in the 1940s. One addressed one's seniors as "Mister" or "Sir"; an associate was often addressed by his last name only; secretaries were "Mrs." or "Miss", never the first name.

Dress was conservative -- white shirts only -- and coats and ties were worn at all times, both in and out of the office. Felt hats were obligatory equipment. The women wore dresses and high heels; pants and running shoes had not yet become accepted.

San Francisco was a city of mostly white, low-rise buildings. All the major downtown streets were two-way and Market Street had four sets of tracks for the trolleys. The old Crocker Building in which the Morrison firm was housed had no air-conditioning of course -- smog was a word then unheard of in San Francisco -- and we breathed that good, clean air just in from 10,000 miles across the Pacific. The lawyers in downtown law firms were white and male, and the support staff was white and female. A good lunch could be had for between \$.56 and \$.87, and starting salaries for lawyers ranged between \$250 and \$300 per month. The firm's net income in 1952 was \$246,812.93. A partner, such as yours truly, with a 6% interest made about \$14,000. The standard work week was Monday through Saturday noon, with a two-week annual vacation for the staff, legal or otherwise. Of course, firm-paid medical insurance, life insurance and firm retirement benefits were items whose time had not yet come.

In the middle and late 1940s the firm was engaged in a wide variety of business matters which had a decidedly

Pacific tilt. Through representation of sugar plantations and related interests, substantial work was done in the Territory of Hawaii and a similar amount of effort was put in helping Philippine companies get back on their feet after World War II. Until Mao took over in October of 1949, the firm had an active practice involving commercial operations in Shanghai and other Chinese coastal cities. Either then or early in the 1950s the firm began to represent Japanese banking interests. For an associate it was a grand time to gain a broad exposure to the practice of law.

The 1950s and early 1960s were times of tremendous capital expansion in the United States, and Morrison's practice reflected this economic surge. The firm was busy representing companies selling securities and representing underwriters marketing such securities issues. It was acquisition time for banks and corporations, and the firm had an unusually large acquisition practice (for a firm its size) in which "friendly" business combinations by way of merger or stock or asset purchases or exchanges were effected by acquisition-minded clients. Today, of course, the "friendly" acquisition continues, but, increasingly, so do "hostile" tender offers in which the firm is also involved.

The firm has always had a strong litigation presence and has represented clients in many important

cases. With that strong history and the increase in litigation generally in the 1950s, the number of the firm's lawyers engaged in litigation grew very rapidly in the 1960s, 1970s and 1980s, and today the largest firm department is the Litigation Department. In the 1950s the firm served clients in important commercial litigation, including burgeoning areas such as antitrust and corporate litigation.

During the 1950s the growing complexity of law (particularly the regulatory aspects) caused the firm to develop a departmental structure, and four departments were established: Business, Labor, Litigation and Tax. Rather than one partner being responsible for all of a client's legal needs, the problems of complex clients began to be treated on a functional basis. Generally speaking, the firm had a partner as the principal coordinator contact for clients, but work was performed by lawyers skilled in the particular discipline involved.

As had been the case for years, the coordinating partner usually had easy and frequent access to the client's CEO and often sat on the company's Board or, at the very least, attended Board and committee meetings. This communication link has changed with the advent of inside general counsel who constitute the firm's principal point of contact with most large corporations today. For the most

part, a direct link between the firm and the client's Board and the CEO no longer exists.

In addition to carrying on its traditional practice, the 1960s saw the firm become heavily involved in the beginnings of electronic banking and consumer bank law. In 1966 the firm became counsel to a group of four California banks which organized the first multi-bank charge card system (Master Charge). Antitrust considerations (involving group activity of competitors) thought to be insurmountable by some were resolved. In those days there were no statutes or regulations to speak of covering consumer credit or charge cards. Writing as it were on a blank slate, the bank card association was established initially on the basis of contractual check clearing house notions. At this time the firm also became increasingly involved with new start-up high tech companies.

Antitrust and securities litigation was at its height in the 1960s and early 1970s. The firm's Litigation Department had more than its share of this litigation in San Francisco and in federal courts throughout the western United States. The litigators were involved in complex multi-district litigation involving asphalt, chlorine, sugar, peripheral computer equipment, airport car rentals, corn products derivatives and various securities litigation. As a matter of firm policy, antitrust counselling and grand

jury work was also performed by the litigators. The Litigation Department has also represented clients in a number of constitutional law cases including First Amendment cases. In recent years, the firm has increased its representation of clients in criminal cases, especially in white-collar crime litigation.

The firm had expanded very little from 18 lawyers in 1946 to 24 lawyers in 1964. Between 1960 and 1965 no new associates were hired! In contrast, other major law firms throughout the country had grown substantially in size in this period. Of the founding Morrison, Hohfeld partners, one retired in 1946, two died in 1961 and one in 1964. Of the principal clients in 1946, all were gone by 1961. Looking back it is quite clear that the Morrison firm stood at a crossroad: change its ways or go down the chute in terms of its ability to remain profitably engaged in big firm practice.

In the early 1960s it began to dawn on the next generation of partners that the firm would no longer be able to engage in a big firm practice unless the size of the firm was expanded with people of the highest quality who must be actively recruited. Foregoing partner short-term profits, the firm spent money and time seeking top-notch people. We were very successful and lucky in that effort. We then developed the belief, still held, that the firm's most

important asset is the last person hired. By 1967 the legal staff had increased to 39 and stands today at over 600. We accept the numbers as inevitable in view of our partnership admission policy which is to make partners of all those qualified without reference to economic considerations, and we are proud of the quality involved in that growth.

In 1974 the firm agreed to become the principal deliverer of legal services to a major California bank and its representation of other banks substantially expanded in the years following. Servicing that client enabled the firm to gain expertise quickly in a variety of fields which helped to expand the size of all departments of the firm swiftly. But 30% of our attention in that year was focused on the bank -- too much on a permanent basis, particularly considering that client no longer exists.

In the 1970s the firm's real estate practice grew in complexity and size to a point where today that practice represents a significant part of the firm's business practice. Those years also saw the firm's Labor Department heavily involved in important discrimination and termination lawsuits. The Tax Department's practice, in keeping with the times, grew in size and complexity, and in the area of state and local taxes a national practice was developed..

The move to open offices outside San Francisco was initiated by the need to service statewide our banking client, Crocker Bank, for whom we were then the sole provider of legal services. As Chairman of the Business Department, I called for volunteers among the partners to go to Los Angeles and open an office there. No volunteers stepped forward and, in the end, we were forced to send an associate. Our first office in Los Angeles was a desk in Crocker's main office. There was considerable initial sentiment among the then partners that we not seek other business in Los Angeles but stick to servicing Crocker! From this small acorn has grown the firm concept that to carry on the practice we prefer the firm needs to be positioned all over the world, and today the firm has principal offices in San Francisco, Los Angeles, New York, Washington D.C., Denver, Seattle, Sacramento, Palo Alto, Walnut Creek, Orange County, London, Brussels, Hong Kong and Tokyo.

The Jeddah office experience, while brief, was exciting and exasperating. The client mix in the Jeddah office ranged from highly profitable bank and project financing work to defending an English wife convicted of adultery and ordered stoned to death. Fortunately, our Saudi sponsor was able to get her sentence successively reduced to 50 lashes and finally to banishment from

Saudi Arabia. While the practice in Saudi was very interesting and profitable, the severe limitations on women working in Saudi Arabia and the religious intolerance of the region, along with our inability to integrate that office's practice with our practice in other offices caused us to turn the profitable Jeddah office over to our then resident partner there.

The 1980s saw an acceleration of the trends started in the late 1960s and 1970s. In the 1980s our practice expanded into the areas of insolvency, public finance, communications, intellectual property, energy, the environment and international transactions, including foreign investment in the United States. Management in that period did an outstanding job of putting the firm on a most satisfactory financial basis but not to the detriment of firm core values. In addition to developing a sound budget process, management put in place a continuing process of studies leading to the firm's entry into new areas of practice and at new locations.

Unquestionably one of the most profound events in the post-World War II span was the gradual acceptance by corporate law firms of women lawyers and lawyers of color, some of whom are partners and hold significant management posts in the firm today. Equally significant is the change to a current non-legal work force made up of Blacks, Whites,

Asians and Latinos. Today, men and women interchangeably occupy almost all the jobs in the firm.

No post-World War II history of the firm would be complete without mention of the four senior partners who founded the Morrison, Hohfeld firm in 1925 and who, with Judge Holloway, ran the firm until the middle 1960s.

Mr. Hohfeld had just become of counsel when I arrived on the scene, and I never worked with him on an extended matter.

Of the other three, Mr. Shuman was a bulldog and a bit of a bully unless you knew how to bark back, but not withstanding that he was Mr. California bank lawyer. Mr. Foerster, a highly-regarded corporate lawyer, was the gentlest of souls with a keen analytical mind and a wonderful fun person with whom to work. Mr. Clark was the most austere and stiff of the group, but what a lawyer and a magnificent person! And he, above all, put a stamp of integrity and quality on the firm which even at this date has not rubbed off.

Judge Holloway, who ran the firm in the '40s and the '50s, was an incredibly efficient lawyer and much like Mr. Foerster in his easy association with people.

I cannot fail to mention the firm's history of being a natural leader in pro bono efforts. The Morrison role model in those efforts was Mr. Clark, who was influential in the Legal Aid Society and the American Bar Association.

Finally, a word about forward planning and core values. We almost got left at the station in terms of forward planning in the early 1960s because we were not sensitive to the fact that law practice was becoming more complex and more lawyers would be needed to remain in a profitable big-firm practice. But by the late 1970s and early 1980s we, ahead of many of our competitors, saw the need for multiple offices to better serve our clients and had begun giving hard thought to the areas of practice likely to prove the most challenging and needed in the 1990s and beyond.

But in the final analysis you will find the most significant characteristics distinguishing one major law firm from another are its core values.

At Morrison we believe the firm's greatest asset better be the last person hired. We take a great deal of money out of the community in fees and feel a strong obligation to plow some of it back, hence the very substantial firm commitment to pro bono efforts. We have an open partnership policy. If found qualified, you will be asked to join the firm without reference to the economic consequences of making you a partner. This makes growth of the firm inevitable, it being our experience that able young partners in time attract business which will require greater staff and associate support. Most of us became lawyers

because we wanted to practice law. For those of you interested in the top dollar, don't look for it at Morrison. If interested, the American lawyer profitability figures are probably not too far off. In sum, we believe strongly our obligations to and joys in the practice of law, community service and our families.

October 1992

JOHN P. AUSTIN

MORRISON & FOERSTER

THROUGH TIME



ALEXANDER F. MORRISON

FEBRUARY 22, 1856

Alexander Francis Hart Morrison born in Weymouth, Massachusetts, to a bootmaker and the daughter of an Irish immigrant.

- 1881
 - Alexander Morrison becomes associated with the San Francisco firm of Cope & Boyd with offices at 324 Pine Street.

- 1883
 - Morrison and a colleague, Thomas V. O'Brien, form their own firm, O'Brien & Morrison, with offices at 402 Montgomery Street.

- 1890
 - Constantine E.A. Foerster joins the firm, name is changed to O'Brien, Morrison & Dangerfield, the first in a series of 14 name changes.

- 1892
 - Messrs. Morrison & Foerster withdraw from O'Brien, Morrison & Dangerfield. They move to the newly-constructed eleven-story Crocker Building, located across Market Street from the Palace Hotel, as one of its first tenants and set up shop under the firm name of Morrison & Foerster.

- 1898
 - Constantine E.A. Foerster dies, firm name becomes Morrison & Cope.

1918

Roland C. Foerster, son of Constantine E.A. Foerster, joins the firm. Clients include the Crocker and John D. Spreckels families.

1921

Alexander Morrison dies while making a goodwill trip to the Orient on behalf of the San Francisco Chamber of Commerce.

1850

1881 - 1883

ALEXANDER F. MORRISON
(in association with Cope & Boyd)

1883 - 1890

O'BRIEN & MORRISON

1890 - 1892

O'BRIEN, MORRISON & DANGERFIELD

1892 - 1893

MORRISON & FOERSTER

1893 - 1894

MORRISON, STRATTON & FOERSTER

1894 - 1897

MORRISON & FOERSTER

1897 - 1898

MORRISON, FOERSTER & COPE

1900

1898 - 1906

MORRISON & COPE

1906 - 1909

MORRISON, COPE & BROBECK

1909 - 1910

MORRISON & BROBECK

*name
discussion*

1924

Morrison, Dunne & Brobeck is dissolved and two firms emerge, Morrison, Hohfeld, Foerster, Shuman & Clark and Brobeck, Dunne, Phleger & Harrison.

1947

18 lawyers.
Firm expands very gradually; attorney ranks from 1947 until 1966 never exceeded 25 lawyers.

1926

Morrison Memorial Library, consisting of over 15,000 volumes collected by Alexander Morrison and an endowed reading room, is presented by Mrs. Morrison to the University of California at Berkeley.



HERBERT CLARK

1939

May T. Morrison, wife of Alexander, dies. The May T. Morrison Trust, administered over the next 20 years, establishes three endowed chairs at Berkeley; creates scholarships at a half-dozen other universities; and is responsible for the Morrison Auditorium and the Alexander Morrison Planetarium at the California Academy of Sciences.

1930s

Herbert Clark becomes a primary force in expanding the Legal Aid Society of San Francisco and does pioneering work in establishing legal aid societies throughout the country. Ed Hohfeld is very active in establishing the public defender program in San Francisco.

1967

39 lawyers.
San Francisco office is temporarily housed in the Equitable Building, 120 Montgomery Street, until the completion of the new Crocker Building in 1969 when the firm moves in as its first tenant.

1975

Firm readies to undergo its fourteenth name change since 1883. The partner next in succession, John Austin, argues that the firm's name should revert to Morrison & Foerster, a moniker the firm had not used since 1897. After some debate, the name is adopted.

1980

162 lawyers.
Offices in San Francisco, Los Angeles, Washington, D.C., Saudi Arabia, and Denver.

1985

255 lawyers.
San Francisco office moves to the First Interstate Building, 345 California Street.

1988

Robert D. Raven begins term as President of the American Bar Association.

1992

650 lawyers.
Offices in San Francisco, Los Angeles, New York, Washington, D.C., Denver, Seattle, Sacramento, Palo Alto, Walnut Creek, Orange County, London, Brussels, Hong Kong, and Tokyo.

1950**2000****1975 - PRESENT**

MORRISON & FOERSTER

1910 - 1924

MORRISON, DUNNE & BROBECK

1955 - 1961

MORRISON, FOERSTER, HOLLOWAY,
SHUMAN & CLARK

1961 - 1975

MORRISON, FOERSTER, HOLLOWAY,
CLINTON & CLARK

1925 - 1955

MORRISON, HOHFELD, FOERSTER, SHUMAN & CLARK

7/31/87

MORRISON ETHICS AND
SOME DOS AND DON'TS IN THE WAY WE
PRACTISE LAW AT MORRISON & FOERSTER

The Chairman of the Firm and the Senior Partner should conduct sessions at which commonly-shared Morrison ethics and practical dos and don'ts are reviewed.

Much emphasis in our contemporary society is put on making money -- tons of it --, and in certain legal circles making money is more important than quality of life and/or quality law practice. Morrison lawyers seem as quick as most to want the tangible good things in life, but it is clear that most of them join Morrison and stay on because they believe Morrison affords them the opportunity to balance a challenging law practice (hard work), payment of their community dues, and enjoyment of a meaningful home life. These objectives are not easily attained but, with careful planning, they are well within one's reach.

Following on a principal Morrison practice ethic is that all clients, large and small, are clients of the firm, not clients of an individual lawyer, notwithstanding how they became clients or who the responsible attorney happens to be. This belief leads to another strongly-held Morrison ethic: the notion that we will compete intensely with the outside world but under no circumstances will we tolerate, at either the partner or associate level, intra-firm competition,

that is, between Morrison lawyers. In times past failure to observe this important firm ethic has led to partners being asked to leave the firm.

At Morrison we believe there is nothing static about the practice of law and, accordingly, all Morrison lawyers, young and old, must always be alert to the need to grow. And to accomplish this objective, the need to establish goals and a schedule to accomplish such goals within a specified timeframe, and the further need to monitor the success or failure in meeting such goals.

Morrison lawyers have an obligation to keep confidential all matters handled for clients. Easy ways to violate this obligation are loose talk in elevators, washrooms and other public places, and carelessly leaving confidential papers about in one's office, home, or other common areas. Discussion of client or firm matters with reporters should only be had when expressly authorized to do so by the responsible attorney.

At Morrison we have traditionally shared firm financial and other sensitive firm information with the partners and the associates. Here, again, we expect our lawyers to keep this information in strict confidence unless expressly otherwise authorized.

Loyalty up is generated by loyalty and fair dealing down -- an ethic highly valued at Morrison. It is a great

mistake to believe that a presumed pecking order gives anyone, senior partner or no, the right to deal with Morrison personnel in other than a calm, fair and open manner. It is much to be regretted that we do have lawyers whose lack of self control causes them to fail to observe this ethic. Fortunately, they are few and far between.

At Morrison we take great pride in the quality of the service we render our clients. As pointed out above, we like profits as much as the next person, but never at the expense of a deteriorating quality of service. To achieve this goal, each Morrison lawyer should be keenly aware of the quality control risks involved in his or her practice. It's a good idea to remember that in a large firm, such as Morrison, conflicts of interest pose a continuing problem which we must all keep constantly in mind. At this stage in the game our computer checks and new business review procedures are rudimentary at best, and all other available means must be explored by a lawyer to avoid an embarrassing conflicts-of-interest problem cropping up.

Keeping abreast of the law in one's chosen field(s) is a key component in any quality control program, and is most effectively accomplished if a schedule is adopted and routinely followed. If time is not blocked out for this purpose on a regular basis, the job won't get done.

John Austin
July 31, 1987

A Birthday Salute to



John Austin

ALL PERSONNEL

Friday, May 26, 1989, is John Austin's 75th Birthday. John is one of the founders of the modern Morrison & Foerster firm. We know that the kindly old gentleman dislikes to have any fuss made over him. Accordingly, we have tried to keep the fuss to a minimum while celebrating 43 years of service to our firm and his friends at Morrison & Foerster. So, instead of a birthday party, we will do the following:

- The Morrison & Foerster Foundation will make a contribution of \$7,500 in John's honor to Legal Assistance to the Elderly, an organization to which he has devoted many years of service.
- In honor of John, the firm (worldwide!) will close at 3 p.m. on Friday to allow an early start on the Memorial Day Three-Day Weekend. This distinction is fitting and proper since John became a role model for many of us by slipping out of the office early on Friday afternoons at the start of long weekends. We should remember, however, that he always did so – and still does – with a minimum of fuss.

Our historian, Tom Wilson, has captured John the man in the attached piece. It is hoped that, while we are slipping out on May 26 *and driving safely* to our destinations, we will reflect on the contributions John has made to our firm, and consider the ways in which each of us can keep them forever a vital part of the fabric of Morrison & Foerster.

HAPPY BIRTHDAY, JOHN!
MORRISON & FOERSTER

A BIRTHDAY SALUTE TO JOHN AUSTIN

Friday, May 26, will mark John Austin's seventy-fifth birthday. This event should occasion a sort of Morrison "Diamond Jubilee" celebration,¹ but John would resist the fuss and we have a holiday weekend approaching anyhow. Nevertheless, we intend to seize this opportunity to at least acknowledge, in however inadequate a fashion, what this good man has meant to all of us at Morrison.

Simply put, no lawyer has left a larger personal imprint on the firm as an institution than John Austin. He was at the firm's helm when we tremulously entered the "modern era" in the early 1970s. Since that time he has been, and continues to be, our wise sage and counsellor; our keeper and expounder of "core values" and the steady conscience of the firm. In short, John has been this firm's heart and soul.

Since 1979 John has been a "retired" partner. Officially, we list him on our roster as a "senior of-counsel." These appellations do not fit. Throughout his decade of "retirement," John has remained actively involved in the life of the firm. In fact, it is difficult to think of a single significant decision involving the firm in which we did not seek John's advice.

Our Morrison community has tended to grow during the period of John's "retirement." This is, in no small part, John's fault. Yet, some of our folks know very little about the degree of John's culpability. The following "context" may help.

John was born in Montclair, New Jersey, a few months before the Great War began in Europe. He was educated at such hardscrabble institutions as Phillips Academy, Harvard (A.B. 1936) and Yale (L.L.B. 1939). In 1940 John became a member of the New York Bar and joined the associate ranks at Milbank, Tweed.

¹Historical analogies are tricky and, inevitably, inaccurate. For example, in no fashion does John resemble Queen Victoria. Moreover, her "Diamond Jubilee" (1897) marked the apex of the British Empire; while our firm at this historical moment is still, hopefully, in its ascendancy.

John's two-year stint at Milbank, Tweed was cut short by the Second World War. Like Pug Henry, John was in naval intelligence and saw active duty as well. During the "D-Day" landings on June 6, 1944, the destroyer upon which John was then serving ran aground off Omaha Beach and was bracketed by consecutive salvos of shore battery fire. A third round from the shore battery never came and John, reflecting on this incident, often has said that he has regarded every day since that time as "gravy."

After the war John and his wife decided to relocate to San Francisco. Fortunately, John met with Herbert Clark at Morrison before he interviewed with Herman Phleger at Brobeck. When John told Mr. Phleger that he had come west with a letter of introduction for Mr. Clark, Mr. Phleger got up and tersely informed John that "this interview has ended." At the time, John was unaware of the split of the Morrison and Brobeck firms in 1924 and pondered what he had done to offend Mr. Phleger.² In any event, on March 16, 1946, thirty-two year old John Austin commenced work at Morrison, Hohfeld, Foerster, Shuman and Clark. He was the seventeenth attorney at the firm and, as he tells it, "the second Democrat."³

John never was a stickler for the creature comforts in the law firm environment. In fact, for the bulk of his first two years at Morrison his "office" was a desk in the library.⁴

In his early years with the firm John worked predominantly on corporate matters for Judge Holloway and Roland Foerster. John credits Judge Holloway with teaching him a skill that he exhibited throughout his career, "passing the clients down" to younger partners and associates.

The firm in the 1950s had predominantly a corporate practice. In the following three decades, John played an irreplaceable role in maintaining and expanding that practice, particularly in the firm's work with Crocker

²Both the Brobeck firm and our firm were then located on separate floors in the Old Crocker Building. John recalls "chilly" elevator rides when Mr. Clark and Mr. Phleger both occupied the same car.

³Alexander Morrison, who died in 1921, was a "hard-dollar" Democrat, who voted for McKinley, a Republican, twice.

⁴Our space problems have had a long heritage.

(he brought Crocker back to the firm), Consolidated Freightways and Memorex. Although one cannot briefly outline the many accomplishments of John's distinguished legal career, it is worth noting that in the 1960s John and a group of Morrison lawyers literally devised the legal framework for the operation of bank credit card systems. He also served the community (as a special master for the federal district court and as an arbitrator, and in charitable work for the United Bay Area Crusade, College Preparatory School, Boalt Hall and the National Association of Settlement Houses) and the bar (as the chair of the largest section of the American Bar Association, the 60,000 member Business Law Section, and an array of corporate law committees on the local and national level). In short, John is an outstanding attorney and one of the top corporate lawyers in the country.

He also is a great teacher. Young lawyers loved working for him. Roland Brandel once praised John's concern for young lawyers and noted that "everyone should have a father like John Austin."

This scion of Yankee blue bloods always insisted that we call him "John" – never "Mr. Austin." Although he was not stuffy, John did inherit through his forebears a keen sense of personal frugality. His frugality one can see even today in his footwear. In days past, John's frugalness led him to save dress shirts which had been pockmarked by burn holes⁵ for winter's wear, when he could cover the holes in his shirt front beneath a vest.⁶

Throughout his time with the firm, John has patiently instructed us that the firm's most important asset must and always should be the last person hired. (Sometimes this precept was obscured by a muttered Latinism like "finis origine pendent".) In 1951, his first year as the firm's hiring partner, John followed his own advice and hired Bob Raven (Boalt 1952). Later in the 1950s John became a persistent advocate for the recruitment of women attorneys. But Morrison hired few men (and even fewer women) as the firm's attorney ranks from 1946 until 1966 never exceeded 25 lawyers.

⁵John was a notoriously careless smoker and once started an office fire in his waste basket.

⁶He still rides the subway out to "Idlewild" (JFK International) rather than pay outrageous sums for a taxi.

In the late 1960s, John, Bob Raven, Dick Archer and others set the firm on a path of rapid growth through the aggressive hiring of able young attorneys. In 1971, John became the Chair of the Firm's Management Committee and led the firm through its first four years on this expansionist program. We are still at sea on the course John charted.

John has always had a strong sense of the firm as an institution. One of his guiding principles, now enshrined as one of our "core values," has been that "all clients, large and small, are clients of the firm, not clients of an individual lawyer, notwithstanding how they became clients or who the responsible attorney happens to be." By following this principle, the firm has been able to deliver "legendary" service to its clients and we have been bound as a Morrison community more closely together.

John's lack of self-aggrandizement was dramatically illustrated in the decision the firm made in 1975 to change the firm name from "Morrison, Foerster, Holloway, Clinton & Clark" to "Morrison & Foerster." By the early 1970s "name" partners had either retired or died in harness and John was next in line for succession into the firm name. John would not have it. In fact, he declared that perambulations in the firm's name were rather silly (the firm had undergone 14 name changes since 1883). He argued that the firm's name should revert to "Morrison & Foerster" – a moniker the firm had not used since 1897. Although Bob Raven had a strong sentiment that the firm should be renamed to "Morrison & Clark," he withdrew his opposition when John convinced him that the "Foerster" in the firm name referred to "Con" (who died in 1898) and not "Roland" (Constantine's son, one of Herbert Clark's contemporaries). Thus, on February 1, 1975 – only fourteen years ago – the firm, once again, became "Morrison & Foerster."

So without John, it is unlikely that we would even be known as "Morrison & Foerster." And, more importantly, without John's guidance and character, it is impossible to perceive how we would be the sort of firm we are today and are seeking to become tomorrow.

Happy birthday, John – from all of us.

– Tom E. Wilson

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Carole E. Hicke

B.A., University of Iowa; economics

M.A., San Francisco State University; U.S. history with emphasis on the American West; thesis: "James Rolph, Mayor of San Francisco."

Interviewer/editor/writer, 1978-present, for business and law firm histories, specializing in oral history techniques. Independently employed.

Interviewer-editor, Regional Oral History Office, University of California, Berkeley, 1985 to present, specializing in California legal, political, and business histories.

Author: Heller, Ehrman, White & McAuliffe: A Century of Service to Clients and Community, 1991.

Editor (1980-1985) newsletters of two professional historical associations: Western Association of Women Historians and Coordinating Committee for Women in the Historical Profession.

Visiting lecturer, San Francisco State University in U.S. history, history of California, history of Hawaii, legal oral history.

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